

AMENDED IN SENATE JUNE 12, 2011

AMENDED IN SENATE MARCH 24, 2011

AMENDED IN SENATE MARCH 17, 2011

AMENDED IN SENATE MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 103

Introduced by Committee on Budget (Blumenfield (Chair), Alejo, Allen, Brownley, Buchanan, Butler, Cedillo, Chesbro, Dickinson, Feuer, Gordon, Huffman, Mitchell, Monning, and Swanson)

January 10, 2011

~~An act to amend Sections 12009, 12201, 12204, 12207, 12242, 12251, 12253, 12254, 12257, 12258, 12260, 12301, 12302, 12303, 12304, 12305, 12307, 12412, 12413, 12421, 12422, 12423, 12427, 12428, 12429, 12431, 12433, 12434, 12491, 12493, 12494, 12601, 12602, 12631, 12632, 12636, 12636.5, 12679, 12681, 12801, 12951, 12977, 12983, 12984, 13108, 17276.1, 17276.20, 23101, 24416.1, 24416.20, and 25128 of, to amend and repeal Sections 17053.33, 17053.34, 17053.45, 17053.46, 17053.47, 17053.70, 17053.74, 17053.75, 17235, 17267.2, 17267.6, 17268, 17276.2, 17276.4, 17276.5, 17276.6, 23612.2, 23622.7, 23622.8, 23633, 23634, 23645, 23646, 24356.6, 24356.7, 24356.8, 24384.5, 24416.2, 24416.4, 24416.5, and 24416.6 of, to amend, repeal, and add Section 25136 of, to add Sections 17053.31 and 23611 to, to repeal Section 25128.5 of, and to repeal and add Sections 17276.22 and 24416.22 of, the Revenue and Taxation Code, to amend Sections 1661, 4601, 5902.5, and 9552 of the Vehicle Code, and to amend Section 14301.11 of the Welfare and Institutions Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately, bill related to the budget. *An act to amend*~~

Sections 17053.33, 17053.34, 17053.45, 17053.46, 17053.47, 17053.70, 17053.74, 23101, 23612.2, 23622.7, 23622.8, 23633, 23634, 23645, 23646, and 25128 of, to amend, repeal, and add Section 25136 of, to add section 6377 to, to repeal section 25128.5 of, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 103, as amended, Committee on Budget. Taxation: ~~personal income and corporation taxes; managed care plan taxes.~~

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

On and after July 1, 2012, this bill would exempt from specified sales and use taxes, or a portion of those taxes, the sale of, and the storage, use, or other consumption in this state, of tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property; in research and development; to maintain, repair, measure, or test specified property; and by a contractor for use in a construction contract with a qualified person, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.

This bill would also specify that this exemption would be operative only so long as state sales and use taxes are equal to or greater than 7% or until July 1, 2016, whichever first occurs.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified

employer, until a cutoff date on which a maximum cumulative credit of \$400,000,000 has been reached for all taxable years. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, under both laws, continue that credit only for taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, and before January 1, 2013, would authorize a credit in the amount of \$4,000 for each full-time employee, as specified, and would revise the definition of “qualified employer” to mean a taxpayer that employed 50 or fewer employees as of the last day of the preceding taxable year. This bill would also provide that the credit, under both laws, would be repealed upon the cutoff date or December 31, 2013, whichever occurs earlier.

The Personal Income Tax Law and the Corporation Tax Law allow for various tax credits and deductions in computing the taxes imposed by those laws, relating to enterprise zones, targeted tax areas, local agency military base recovery areas, and manufacturing enhancement areas. Under existing law, specified tax credits for sales and use taxes paid by certain taxpayers in these areas may be carried over to succeeding taxable years, until the credit amount is exhausted. Under both laws, credits are allowed to specified taxpayers for the hiring and employment of specified employees within enterprise zones, targeted tax areas, local agency military base recovery areas, and manufacturing enhancement areas.

This bill would revise the credits allowed for the hiring and employment of specified employees for taxable years beginning on or after January 1, 2011, to provide, generally, for a credit of \$5,000 for each net increase in specified full-time employees. This bill would cease to allow carryovers for the credits for sales and use taxes and for hiring and employment for taxable years beginning before January 1, 2006, and limit the carryover period to five years for those portions of credit that were first allowed in taxable years beginning on or after January 1, 2006.

This bill would require specified taxpayers to submit information to the Franchise Tax Board under penalty of perjury. By requiring these taxpayer to submit information under penalty of perjury, this bill would create a new crime and thereby impose a state-mandated local program.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income

between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning or after January 1, 2011, revise the rules which determine whether a taxpayer is doing business within this state, revise the provisions which determine whether specific sales occur in this state, and require a taxpayer, except as provided, to apportion their income in accordance with a single sales factor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would constitute a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

~~(1) The Personal Income Tax Law and the Corporation Tax Law allow for various tax credits and deductions in computing the taxes imposed by those laws, relating to enterprise zones, targeted tax areas, local agency military base recovery areas, manufacturing enhancement areas, and net operating losses.~~

~~This bill would make these provisions inoperative for taxable years beginning on or after January 1, 2011, and would repeal these provisions as of December 1, 2011. This bill would also prevent carryovers for taxable years beginning on or after January 1, 2011, for specified provisions. This bill would delete obsolete references to conform to these changes.~~

~~(2) Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law, for net operating losses incurred in taxable years beginning on or after January 1, 2008, provides a carryover period of 20 years and allows net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding 2 taxable years, as provided.~~

~~This bill would recalculate elected net operating loss carryovers available, under specified provisions that have been repealed by this bill, by applying the net operating loss rules applicable to the taxable year in which the net operating loss was incurred.~~

~~(3) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.~~

~~This bill would, for taxable years beginning or after January 1, 2011, revise the rules which determine whether a taxpayer is doing business within this state, revise the provisions which determine whether specific sales occur in this state, and require a taxpayer, except as provided, to apportion income in accordance with a single sales factor.~~

~~(4) Existing law requires, until July 1, 2011, every return required to be filed with the State Insurance Commissioner pursuant to provisions governing taxes on the total operating revenue of Medi-Cal managed care plans to be signed by the insurer or the Medi-Cal managed care plan or an executive officer of the insurer or the plan and to be made under oath or contain a written declaration that is made under penalty of perjury.~~

~~This bill would, instead, require every return required to be filed with the State Insurance Commissioner pursuant to provisions governing taxes on the total operating revenue of Medi-Cal managed care plans to be made under oath or contain a written declaration that is made under penalty of perjury until January 1, 2014. By expanding the crime of perjury, this bill would impose a state-mandated local program.~~

~~(5) Existing law generally requires the vehicle license fee to be paid to the Department of Motor Vehicles at the time required for renewal or registration of the vehicle. Existing law establishes fees for original and renewal registration of vehicles to be collected by the Department of Motor Vehicles. Existing law requires the department, with a specified exception, to notify the registered owner of each vehicle of the date that registration renewal fees for the vehicle are due, at least 60 days prior to that due date, and to indicate the fact that the required notice was mailed by a notation in the department's records.~~

~~This bill would, commencing on June 8, 2011, and operative until January 1, 2012, reduce the department's time period for notification that vehicle registration renewal fees are due to 30 days prior to the due date, thus requiring the vehicle license fee also to be due on that date.~~

~~(6) Existing law requires that the renewal of registration for a vehicle that is either currently registered or for which a specified certification is filed be obtained not more than 75 days prior to the expiration of the current registration or certification.~~

~~This bill would, commencing on June 8, 2011, and operative until July 1, 2011, instead apply the above-specified requirement only to the renewal of registration for any vehicle that expires on or before June 30, 2011, and would require the renewal of registration for a vehicle that expires on or after July 1, 2011, or for which a specified certification is filed, to be obtained not more than 15 days prior to the expiration of the current registration or certification, thus requiring the vehicle license fee also to be due on that date.~~

~~(7) Existing law requires that if an application for a registration transaction is filed with the Department of Motor Vehicles during the 30 days immediately preceding the date of expiration of registration of the vehicle, the application be accompanied by the full renewal fees for the ensuing registration year in addition to any other fees that are due and payable.~~

~~This bill would, commencing on the date that this bill becomes operative and remaining operative until July 1, 2011, reduce the time period to 10 days immediately preceding the date of expiration of~~

registration of the vehicle, thus requiring the vehicle license fee also to be due on that date.

~~(8) Existing law provides that fees are delinquent if an application for renewal of registration, or an application for renewal of special license plates, is made after midnight of the expiration date of the registration or special plates, or 60 days after the date the registered owner is notified by the Department of Motor Vehicles, whichever is later.~~

~~This bill would, commencing on June 8, 2011, and operative until January 1, 2012, reduce the time period to 30 days after the date the registered owner is notified by the department, thus requiring the vehicle license fee also to be due on that date.~~

~~(9) Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Under existing law, one of the methods by which Medi-Cal services are provided is pursuant to contracts with various types of managed care plans. Existing law imposes various taxes, including a tax at a specified rate on the gross premiums of an insurer, as defined; and, until July 1, 2011, on the total operating revenue, as specified, of a Medi-Cal managed care plan, as defined. Existing law continuously appropriates the revenues derived from the tax on Medi-Cal managed care plans for specified purposes.~~

~~This bill would extend the imposition of the tax on the total operating revenue of Medi-Cal managed care plans until January 1, 2014, and make other conforming changes. By extending the imposition of a tax whose revenues are continuously appropriated, this bill would make an appropriation.~~

~~(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~(11) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and~~

~~stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.~~

~~This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.~~

~~(12) This bill would declare that it is to take immediate effect as an urgency statute and a bill providing for appropriations related to the Budget Bill.~~

Vote: $\frac{2}{3}$. Appropriation: ~~yes~~*no*. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6377 is added to the Revenue and
2 Taxation Code, to read:

3 6377. (a) (1) On and after July 1, 2012, there are exempted
4 from the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3,
5 the gross receipts from the sale of, and the storage, use, or other
6 consumption in this state of, any of the following:

7 (A) Tangible personal property purchased for use by a qualified
8 person to be used primarily in any stage of the manufacturing,
9 processing, refining, fabricating, or recycling of tangible personal
10 property, beginning at the point any raw materials are received
11 by the qualified person and introduced into the process and ending
12 at the point at which the manufacturing, processing, refining,
13 fabricating, or recycling has altered the property to its completed
14 form, including packaging, if required.

15 (B) Tangible personal property purchased for use by a qualified
16 person to be used primarily in research and development.

17 (C) Tangible personal property purchased for use by a qualified
18 person to be used primarily to maintain, repair, measure, or test
19 any property described in subparagraph (A) or (B).

20 (D) Tangible personal property purchased by a contractor for
21 use in the performance of a construction contract for a qualified
22 person who will use the tangible personal property as an integral
23 part of the manufacturing, processing, refining, fabricating, or
24 recycling process, or as a research or storage facility for use in
25 connection with the manufacturing process.

26 (2) The exemption described in paragraph (1) shall not apply
27 to the gross receipts from the sale of, or the storage, use, or other

1 *consumption of tangible personal property that is used primarily*
2 *in administration, general management, or marketing.*

3 *(b) For purposes of this section:*

4 *(1) "Acquire" includes any gift, inheritance, transfer incident*
5 *to divorce, or any other transfer, whether or not for consideration.*

6 *(2) "Fabricating" means to make, build, create, produce, or*
7 *assemble components or property to work in a new or different*
8 *manner.*

9 *(3) "Manufacturing" means the activity of converting or*
10 *conditioning tangible personal property by changing the form,*
11 *composition, quality, or character of the property for ultimate sale*
12 *at retail or use in the manufacturing of a product to be ultimately*
13 *sold at retail. Manufacturing includes any improvements to*
14 *tangible personal property that result in a greater service life or*
15 *greater functionality than that of the original property.*

16 *(4) "Primarily," for the purpose of subdivision (a), means*
17 *tangible personal property used 50 percent or more of the time in*
18 *an activity described in subdivision (a).*

19 *(5) "Process" means the period beginning at the point at which*
20 *any raw materials are received by the qualified person and*
21 *introduced into the manufacturing, processing, refining,*
22 *fabricating, or recycling activity of the qualified person and ending*
23 *at the point at which the manufacturing, processing, refining,*
24 *fabricating, or recycling activity of the qualified person has altered*
25 *tangible personal property to its completed form, including*
26 *packaging, if required. Raw materials shall be considered to have*
27 *been introduced into the process when the raw materials are stored*
28 *on the same premises where the qualified person's manufacturing,*
29 *processing, refining, fabricating, or recycling activity is conducted.*
30 *Raw materials that are stored on premises other than where the*
31 *qualified person's manufacturing, processing, refining, fabricating,*
32 *or recycling activity is conducted, shall not be considered to have*
33 *been introduced into the manufacturing, processing, refining,*
34 *fabricating, or recycling process.*

35 *(6) "Processing" means the physical application of the materials*
36 *and labor necessary to modify or change the characteristics of*
37 *property.*

38 *(7) "Qualified person" means a person that is either of the*
39 *following:*

1 (A) A new trade or business that is primarily engaged in those
2 lines of business classified in Industry Groups 3111 to 3399,
3 inclusive, or Industry Group 5112 of the North American Industry
4 Classification System (NAICS) published by the United States
5 Office of Management and Budget (OMB), 2007 edition. In
6 determining whether a trade or business activity qualifies as a
7 new trade or business, the following rules shall apply:

8 (i) In any case where a person purchases or otherwise acquires
9 all or any portion of the assets of an existing trade or business
10 (irrespective of the form of entity) that is doing business in this
11 state (within the meaning of Chapter 2 (commencing with Section
12 23101) of Part 11), the trade or business thereafter conducted by
13 that person (or any related person) shall not be treated as a new
14 business if the aggregate fair market value of the acquired assets
15 (including, real, personal, tangible, and intangible property) used
16 by that person (or any related person) in the conduct of his or her
17 trade or business exceeds 20 percent of the aggregate fair market
18 value of the total assets of the trade or business being conducted
19 by the person (or any related person). For purposes of this
20 subparagraph only, the following rules shall apply:

21 (I) The determination of the relative fair market values of the
22 acquired assets and the total assets shall be made as of the last
23 day of the month following the quarterly period in which the person
24 (or any related person) first uses any of the acquired trade or
25 business assets in his or her business activity.

26 (II) Any acquired assets that constituted property described in
27 Section 1221(a) of the Internal Revenue Code in the hands of the
28 transferor shall not be treated as assets acquired from an existing
29 trade or business, unless those assets also constitute property
30 described in Section 1221(a) of the Internal Revenue Code in the
31 hands of the acquiring person (or related person).

32 (ii) In any case where a person (or any related person) is
33 engaged in one or more trade or business activities in this state,
34 or has been engaged in one or more trade or business activities
35 in this state within the preceding 36 months ("prior trade or
36 business activity"), and thereafter commences an additional trade
37 or business activity in this state, the additional trade or business
38 activity shall only be treated as a new business if the additional
39 trade or business activity is classified under a different Industry
40 Group (4-digit) of the NAICS published by the United States OMB,

1 2007 edition, than are any of the person's (or any related person's)
2 current or prior trade or business activities in this state.

3 (iii) In any case where a person, including all related persons,
4 is engaged in trade or business activities wholly outside of this
5 state and that person first commences doing business in this state
6 (within the meaning of Chapter 2 (commencing with Section 23101)
7 of Part 11) on or after June 30, 2012, (other than by purchase or
8 other acquisition described in clause (i)), the trade or business
9 activity shall be treated as a new business.

10 (iv) In any case where the legal form under which a trade or
11 business activity is being conducted is changed, the change in form
12 shall be disregarded and the determination of whether the trade
13 or business activity is a new business shall be made by treating
14 the person as having purchased or otherwise acquired all or any
15 portion of the assets of an existing trade or business under the
16 rules of clause (i).

17 (v) A "qualified person" shall not be regarded as a new trade
18 or business when the qualified person has conducted business
19 activities in a new trade or business for three or more years.

20 (B) A trade or business, other than a new trade or business
21 described in subparagraph (A), that is primarily engaged in those
22 lines of business classified in Industry Groups 3111 to 3399,
23 inclusive, or Industry Group 5112, of the NAICS published by the
24 United States OMB, 2007 edition.

25 (8) "Qualified person" shall not include a person that is a
26 member of a combined reporting group that is required to
27 apportion its income pursuant to subdivision (b) of Section 25128.
28 For purposes of this paragraph, "a person that is a member of a
29 combined reporting group" is defined as a person whose tax
30 liability or net income is determined by a combined report pursuant
31 to Section 25101 or 25110, or is an entity included in the combined
32 report.

33 (9) "Refining" means the process of converting a natural
34 resource to an intermediate or finished product.

35 (10) "Related person" means any person that is related to
36 another person under either Section 267 or 318 of the Internal
37 Revenue Code.

38 (11) "Research and development" means those activities that
39 are described in Section 174 of the Internal Revenue Code or in
40 any regulations thereunder.

1 (12) *“Tangible personal property” includes, but is not limited*
2 *to, all of the following:*

3 (A) *Machinery and equipment, including component parts and*
4 *contrivances such as belts, shafts, moving parts, and operating*
5 *structures.*

6 (B) *All equipment or devices used or required to operate,*
7 *control, regulate, or maintain the machinery, including, without*
8 *limitation, computers, data processing equipment, and computer*
9 *software, together with all repair and replacement parts with a*
10 *useful life of one or more years therefor, whether purchased*
11 *separately or in conjunction with a complete machine and*
12 *regardless of whether the machine or component parts are*
13 *assembled by the taxpayer or another party.*

14 (C) *Property used in pollution control that meets or exceeds*
15 *standards established by this state or any local or regional*
16 *governmental agency within this state.*

17 (D) *Special purpose buildings and foundations used as an*
18 *integral part of the manufacturing, processing, refining, or*
19 *fabricating process, or that constitute a research or storage facility*
20 *used during the manufacturing process. Buildings used solely for*
21 *warehousing purposes after completion of the manufacturing*
22 *process are not included.*

23 (E) *Property used in recycling.*

24 (13) *“Tangible personal property” does not include any of the*
25 *following:*

26 (A) *Consumables with a useful life of less than one year.*

27 (B) *Furniture, inventory, equipment used in the extraction*
28 *process, or equipment used to store finished products that have*
29 *completed the manufacturing process.*

30 (14) *“Useful life” for tangible personal property that a qualified*
31 *person treats as having a useful life of one or more years for state*
32 *income or franchise tax purposes shall be deemed to have a useful*
33 *life of one or more years for purposes of this section. Useful life*
34 *for tangible personal property that a qualified person treats as*
35 *having a useful life of less than one year for state income or*
36 *franchise tax purposes shall be deemed to have a useful life of less*
37 *than one year for purposes of this section.*

38 (c) *An exemption shall not be allowed under this section unless*
39 *the purchaser furnishes the retailer with an exemption certificate,*
40 *completed in accordance with any instructions or regulations as*

1 the board may prescribe, and the retailer retains a copy of the
2 exemption certificate in its records. The exemption certificate shall
3 contain the sales price of the tangible personal property that is
4 exempt pursuant to subdivision (a) and shall be furnished to the
5 board upon request.

6 (d) Notwithstanding any other law, the exemption established
7 by this section shall not apply with respect to any tax levied by a
8 county, city, or district pursuant to, or in accordance with, the
9 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5
10 (commencing with Section 7200)) or the Transactions and Use
11 Tax Law (Part 1.6 (commencing with Section 7251)).

12 (e) Notwithstanding subdivision (a), for a qualified person
13 described in subparagraph (B) of paragraph (7) of subdivision
14 (b), or for a contractor performing a construction contract as
15 described in subparagraph (D) of paragraph (1) of subdivision
16 (a) for a qualified person as described in subparagraph (B) of
17 paragraph (7) of subdivision (b), the exemption established by this
18 section shall not apply with respect to 80 percent of the tax levied
19 by Sections 6051, 6051.3, 6201, and 6201.3.

20 (f) Notwithstanding subdivision (a), the exemption provided by
21 this section shall not apply to any sale or use of property which,
22 within one year from the date of purchase, is either removed from
23 California or converted from an exempt use under subdivision (a)
24 to some other use not qualifying for the exemption.

25 (g) If a purchaser certifies in writing to the seller that the
26 property purchased without payment of the tax will be used in a
27 manner entitling the seller to regard the gross receipts from the
28 sale as exempt from the sales tax pursuant to this section, and
29 within one year from the date of purchase, the purchaser (1)
30 removes that property outside California, (2) converts that property
31 for use in a manner not qualifying for the exemption, or (3) uses
32 that property in a manner not qualifying for the exemption, the
33 purchaser shall be liable for payment of sales tax, with applicable
34 interest, as if the purchaser were a retailer making a retail sale
35 of the property at the time the property is so removed, converted,
36 or used, and the sales price of the property to the purchaser shall
37 be deemed the gross receipts from that retail sale.

38 (h) At the time necessary information technologies and
39 electronic data warehousing capabilities of the board are
40 sufficiently established, the board shall determine an efficient

1 means by which qualified persons may electronically apply for,
2 and receive, an exemption certificate that contains information
3 that would assist retailers in complying with this part with respect
4 to the exemption described by this section.

5 (i) This section shall only become operative if the total rate of
6 the taxes imposed under this part and Section 35 of Article XIII of
7 the California Constitution is equal to or greater than 7 percent.

8 (j) This section shall remain in effect only until the earlier of
9 July 1, 2016, or the date the total rate of taxes imposed under this
10 part and Section 35 of Article XIII of the California Constitution
11 is less than 7 percent.

12 SEC. 2. Section 17053.33 of the Revenue and Taxation Code
13 is amended to read:

14 17053.33. (a) For each taxable year beginning on or after
15 January 1, 1998, there shall be allowed as a credit against the “net
16 tax” (as tax,” as defined in Section ~~17039~~) 17039, for the taxable
17 year an amount equal to the sales or use tax paid or incurred during
18 the taxable year by the qualified taxpayer in connection with the
19 qualified taxpayer’s purchase of qualified property.

20 (b) For purposes of this section:

21 (1) “Qualified property” means property that meets all of the
22 following requirements:

23 (A) Is any of the following:

24 (i) Machinery and machinery parts used for fabricating,
25 processing, assembling, and manufacturing.

26 (ii) Machinery and machinery parts used for the production of
27 renewable energy resources.

28 (iii) Machinery and machinery parts used for either of the
29 following:

30 (I) Air pollution control mechanisms.

31 (II) Water pollution control mechanisms.

32 (iv) Data processing and communications equipment, such as
33 computers, computer-automated drafting systems, copy machines,
34 telephone systems, and faxes.

35 (v) Motion picture manufacturing equipment central to
36 production and post production, such as cameras, audio recorders,
37 and digital image and sound processing equipment.

38 (B) The total cost of qualified property purchased and placed
39 in service in any taxable year that may be taken into account by

1 any qualified taxpayer for purposes of claiming this credit shall
2 not exceed one million dollars (\$1,000,000).

3 (C) The qualified property is used by the qualified taxpayer
4 exclusively in a targeted tax area.

5 (D) The qualified property is purchased and placed in service
6 before the date the targeted tax area designation expires, is revoked,
7 is no longer binding, or becomes inoperative.

8 (2) (A) “Qualified taxpayer” means a person or entity that meets
9 both of the following:

10 (i) Is engaged in a trade or business within a targeted tax area
11 designated pursuant to Chapter 12.93 (commencing with Section
12 7097) of Division 7 of Title 1 of the Government Code.

13 (ii) Is engaged in those lines of business described in Codes
14 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299,
15 inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive,
16 of the Standard Industrial Classification (SIC) Manual published
17 by the United States Office of Management and Budget, 1987
18 edition.

19 (B) In the case of any pass-through entity, the determination of
20 whether a taxpayer is a qualified taxpayer under this section shall
21 be made at the entity level and any credit under this section or
22 Section 23633 shall be allowed to the pass-through entity and
23 passed through to the partners or shareholders in accordance with
24 applicable provisions of this part or Part 11 (commencing with
25 Section 23001). For purposes of this subparagraph, the term
26 “pass-through entity” means any partnership or S corporation.

27 (3) “Targeted tax area” means the area designated pursuant to
28 Chapter 12.93 (commencing with Section 7097) of Division 7 of
29 Title 1 of the Government Code.

30 (c) If the qualified taxpayer is allowed a credit for qualified
31 property pursuant to this section, only one credit shall be allowed
32 to the taxpayer under this part with respect to that qualified
33 property.

34 (d) If the qualified taxpayer has purchased property upon which
35 a use tax has been paid or incurred, the credit provided by this
36 section shall be allowed only if qualified property of a comparable
37 quality and price is not timely available for purchase in this state.

38 (e) (1) In the case where the credit otherwise allowed under
39 this section exceeds the “net tax” for the taxable year, that portion
40 of the credit that exceeds the “net tax” may be carried over and

1 added to the credit, if any, in the following year, and succeeding
2 years if necessary, until the credit is exhausted. The credit shall
3 be applied first to the earliest taxable years possible.

4 (2) *Notwithstanding paragraph (1), for taxable years beginning*
5 *on or after January 1, 2011:*

6 (A) *In the case of any portion of a credit available for carryover*
7 *and attributable to a taxable year beginning before January 1,*
8 *2006, that portion shall not be carried forward.*

9 (B) *In the case of credits first allowed in taxable years beginning*
10 *on or after January 1, 2006, the carryover period shall be five*
11 *years from the year for which the credit was first allowed.*

12 (f) Any qualified taxpayer who elects to be subject to this section
13 shall not be entitled to increase the basis of the qualified property
14 as otherwise required by Section 164(a) of the Internal Revenue
15 Code with respect to sales or use tax paid or incurred in connection
16 with the qualified taxpayer's purchase of qualified property.

17 (g) (1) The amount of the credit otherwise allowed under this
18 section and Section 17053.34, including any credit carryover from
19 prior years, that may reduce the "net tax" for the taxable year shall
20 not exceed the amount of tax that would be imposed on the
21 qualified taxpayer's business income attributable to the targeted
22 tax area determined as if that attributable income represented all
23 of the income of the qualified taxpayer subject to tax under this
24 part.

25 (2) Attributable income shall be that portion of the taxpayer's
26 California source business income that is apportioned to the
27 targeted tax ~~area~~ area. For that purpose, the taxpayer's business
28 income attributable to sources in this state first shall be determined
29 in accordance with Chapter 17 (commencing with Section 25101)
30 of Part 11. That business income shall be further apportioned to
31 the targeted tax area in accordance with Article 2 (commencing
32 with Section 25120) of Chapter 17 of Part 11, modified for
33 purposes of this section in accordance with paragraph (3).

34 (3) Business income shall be apportioned to the targeted tax
35 area by multiplying the total California business income of the
36 taxpayer by a fraction, the numerator of which is the property
37 factor plus the payroll factor, and the denominator of which is two.
38 For purposes of this paragraph:

39 (A) The property factor is a fraction, the numerator of which is
40 the average value of the taxpayer's real and tangible personal

1 property owned or rented and used in the targeted tax area during
2 the taxable year, and the denominator of which is the average value
3 of all the taxpayer's real and tangible personal property owned or
4 rented and used in this state during the taxable year.

5 (B) The payroll factor is a fraction, the numerator of which is
6 the total amount paid by the taxpayer in the targeted tax area during
7 the taxable year for compensation, and the denominator of which
8 is the total compensation paid by the taxpayer in this state during
9 the taxable year.

10 (4) The portion of any credit remaining, if any, after application
11 of this subdivision, shall be carried over to succeeding taxable
12 years, as if it were an amount exceeding the "net tax" for the
13 taxable year, as provided in subdivision (e).

14 (5) In the event that a credit carryover is allowable under
15 subdivision (e) for any taxable year after the targeted tax area
16 designation has expired, has been revoked, is no longer binding,
17 or has become inoperative, the targeted tax area shall be deemed
18 to remain in existence for purposes of computing the limitation
19 specified in this subdivision.

20 (h) The amendments made to this section by the act adding this
21 subdivision shall apply to taxable years beginning on or after
22 January 1, 1998.

23 (i) *For taxable years beginning on or after January 1, 2011,*
24 *the credit allowed by this section must be claimed on a timely filed*
25 *original return of the qualified taxpayer.*

26 *SEC. 3. Section 17053.34 of the Revenue and Taxation Code*
27 *is amended to read:*

28 17053.34. (a) (1) For each taxable year beginning on or after
29 January 1, 1998, there shall be allowed a credit against the "net
30 ~~tax~~" ~~(as tax,~~ as defined in Section ~~17039~~) 17039, to a qualified
31 taxpayer who employs a qualified employee in a targeted tax area
32 during the taxable year. ~~The~~ *For qualified employees who first*
33 *commenced employment in a taxable year beginning on or after*
34 *January 1, 1998, and before January 1, 2011, the credit shall be*
35 *equal to the sum of each of the following:*

36 (1)
37 (A) Fifty percent of qualified wages in the first year of
38 employment.

39 (2)

1 (B) Forty percent of qualified wages in the second year of
2 employment.

3 ~~(3)~~

4 (C) Thirty percent of qualified wages in the third year of
5 employment.

6 ~~(4)~~

7 (D) Twenty percent of qualified wages in the fourth year of
8 employment.

9 ~~(5)~~

10 (E) Ten percent of qualified wages in the fifth year of
11 employment.

12 (2) *For qualified employees who first commence employment*
13 *in a taxable year beginning on or after January 1, 2011, the credit*
14 *shall be equal to five thousand dollars (\$5,000) for each net*
15 *increase in qualified full-time employees, as specified in*
16 *subdivision (c), hired during the taxable year by a qualified*
17 *taxpayer.*

18 (b) For purposes of this section:

19 (1) ~~“Qualified”~~ *For taxable years beginning on or after January*
20 *1, 1998, and before January 1, 2011, “qualified wages” means:*

21 (A) That portion of wages paid or incurred by the qualified
22 taxpayer during the taxable year to qualified employees that does
23 not exceed 150 percent of the minimum wage.

24 (B) Wages received during the 60-month period beginning with
25 the first day the employee commences employment with the
26 qualified taxpayer. Reemployment in connection with any increase,
27 including a regularly occurring seasonal increase, in the trade or
28 business operations of the qualified taxpayer does not constitute
29 commencement of employment for purposes of this section.

30 (C) Qualified wages do not include any wages paid or incurred
31 by the qualified taxpayer on or after the targeted tax area expiration
32 date. However, wages paid or incurred with respect to qualified
33 employees who are employed by the qualified taxpayer within the
34 targeted tax area within the 60-month period prior to the targeted
35 tax area expiration date shall continue to qualify for the credit
36 under this section after the targeted tax area expiration date, in
37 accordance with all provisions of this section applied as if the
38 targeted tax area designation were still in existence and binding.

39 (2) *“Acquired” includes any gift, inheritance, transfer incident*
40 *to divorce, or any other transfer, whether or not for consideration.*

1 ~~(2)~~

2 (3) “Minimum wage” means the wage established by the
3 Industrial Welfare Commission as provided for in Chapter 1
4 (commencing with Section 1171) of Part 4 of Division 2 of the
5 Labor Code.

6 ~~(3)~~

7 (4) “Targeted tax area expiration date” means the date the
8 targeted tax area designation expires, is revoked, is no longer
9 binding, or becomes inoperative.

10 ~~(4)~~

11 (5) (A) “Qualified employee” means an individual who meets
12 all of the following requirements:

13 (i) At least 90 percent of his or her services for the qualified
14 taxpayer during the taxable year are directly related to the conduct
15 of the qualified taxpayer’s trade or business located in a targeted
16 tax area.

17 (ii) Performs at least 50 percent of his or her services for the
18 qualified taxpayer during the taxable year in a targeted tax area.

19 (iii) Is hired by the qualified taxpayer after the date of original
20 designation of the area in which services were performed as a
21 targeted tax area.

22 (iv) ~~Is~~ *For an individual who first commenced employment in*
23 *taxable years beginning on or after January 1, 1998, and before*
24 *January 1, 2011, he or she is any of the following:*

25 (I) Immediately preceding the qualified employee’s
26 commencement of employment with the qualified taxpayer, was
27 a person eligible for services under the federal Job Training
28 Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor,
29 who is receiving, or is eligible to receive, subsidized employment,
30 training, or services funded by the federal Job Training Partnership
31 Act, or its successor.

32 (II) Immediately preceding the qualified employee’s
33 commencement of employment with the qualified taxpayer, was
34 a person eligible to be a voluntary or mandatory registrant under
35 the Greater Avenues for Independence Act of 1985 (GAIN)
36 provided for pursuant to Article 3.2 (commencing with Section
37 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and
38 Institutions Code, or its successor.

1 (III) Immediately preceding the qualified employee's
2 commencement of employment with the qualified taxpayer, was
3 an economically disadvantaged individual 14 years of age or older.

4 (IV) Immediately preceding the qualified employee's
5 commencement of employment with the qualified taxpayer, was
6 a dislocated worker who meets any of the following:

7 ~~(aa)~~

8 *(ia)* Has been terminated or laid off or who has received a notice
9 of termination or layoff from employment, is eligible for or has
10 exhausted entitlement to unemployment insurance benefits, and
11 is unlikely to return to his or her previous industry or occupation.

12 ~~(bb)~~

13 *(ib)* Has been terminated or has received a notice of termination
14 of employment as a result of any permanent closure or any
15 substantial layoff at a plant, facility, or enterprise, including an
16 individual who has not received written notification but whose
17 employer has made a public announcement of the closure or layoff.

18 ~~(cc)~~

19 *(ic)* Is long-term unemployed and has limited opportunities for
20 employment or reemployment in the same or a similar occupation
21 in the area in which the individual resides, including an individual
22 55 years of age or older who may have substantial barriers to
23 employment by reason of age.

24 ~~(dd)~~

25 *(id)* Was self-employed (including farmers and ranchers) and
26 is unemployed as a result of general economic conditions in the
27 community in which he or she resides or because of natural
28 disasters.

29 ~~(ee)~~

30 *(ie)* Was a civilian employee of the Department of Defense
31 employed at a military installation being closed or realigned under
32 the Defense Base Closure and Realignment Act of 1990.

33 ~~(ff)~~

34 *(if)* Was an active member of the Armed Forces or National
35 Guard as of September 30, 1990, and was either involuntarily
36 separated or separated pursuant to a special benefits program.

37 ~~(gg)~~

38 *(ig)* Is a seasonal or migrant worker who experiences chronic
39 seasonal unemployment and underemployment in the agriculture

1 industry, aggravated by continual advancements in technology and
2 mechanization.

3 ~~(hh)~~

4 *(ih)* Has been terminated or laid off, or has received a notice of
5 termination or layoff, as a consequence of compliance with the
6 Clean Air Act.

7 *(V)* Immediately preceding the qualified employee's
8 commencement of employment with the qualified taxpayer, was
9 a disabled individual who is eligible for or enrolled in, or has
10 completed a state rehabilitation plan or is a service-connected
11 disabled veteran, veteran of the Vietnam era, or veteran who is
12 recently separated from military service.

13 *(VI)* Immediately preceding the qualified employee's
14 commencement of employment with the qualified taxpayer, was
15 an ex-offender. An individual shall be treated as convicted if he
16 or she was placed on probation by a state court without a finding
17 of guilty.

18 *(VII)* Immediately preceding the qualified employee's
19 commencement of employment with the qualified taxpayer, was
20 a person eligible for or a recipient of any of the following:

21 ~~(aa)~~

22 *(ia)* Federal Supplemental Security Income benefits.

23 ~~(bb)~~

24 *(ib)* Aid to Families with Dependent Children.

25 ~~(ee)~~

26 *(ic)* Food stamps.

27 ~~(dd)~~

28 *(id)* State and local general assistance.

29 *(VIII)* Immediately preceding the qualified employee's
30 commencement of employment with the qualified taxpayer, was
31 a member of a federally recognized Indian tribe, band, or other
32 group of Native American descent.

33 *(IX)* Immediately preceding the qualified employee's
34 commencement of employment with the qualified taxpayer, was
35 a resident of a targeted tax area.

36 *(X)* Immediately preceding the qualified employee's
37 commencement of employment with the taxpayer, was a member
38 of a targeted group as defined in Section 51(d) of the Internal
39 Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(v) *For a qualified employee who first commences employment in taxable years beginning on or after January 1, 2011, that individual is a “qualified full-time employee” if, in addition to any other requirement imposed by this section, he or she was either:*

(I) *Paid wages by the qualified taxpayer for services of not less than an average of 35 hours per week.*

(II) *A salaried employee and is paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified taxpayer.*

~~(5)~~

(6) (A) “Qualified taxpayer” means a person or entity that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23634 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 11 (commencing with Section 23001). For purposes of this subdivision, the term “passthrough entity” means any partnership or S corporation.

(C) (i) *Notwithstanding subparagraph (A), a “qualified taxpayer” shall not include any person or entity described in subparagraph (A) that first commences business activity in a targeted tax area during the taxable year and has, within 24 months before the taxpayer first commenced business activity in the*

1 targeted tax area, had an overall reduction in the number of
2 employees employed by the taxpayer within the state outside of
3 the targeted tax area, unless that person or entity has made a
4 written offer of employment to each of the employees employed at
5 the location within the state where employment was reduced for
6 such employees to continue their employment with that person or
7 entity within the targeted tax area.

8 (ii) The written offer referred to in this subparagraph shall be
9 made prior to the termination of employment at the location within
10 the state that is outside the targeted tax area.

11 (iii) If any employee described in clause (i) does not receive a
12 timely written offer, the person or entity shall not be a qualified
13 taxpayer for that taxable year, even if other employees do receive
14 a written offer.

15 (iv) A person or entity shall be required to provide, upon request
16 of the Franchise Tax Board, written certification, under penalty
17 of perjury, that the requirements of this subparagraph were met.

18 (v) All employees of the trades or businesses that are treated
19 as related under Section 267, 318, or 707 of the Internal Revenue
20 Code shall be treated as employed by a single qualified taxpayer.

21 (vi) In determining whether the qualified taxpayer has first
22 commenced doing business in the targeted tax area during the
23 taxable year, the provisions of subdivision (f) of Section 17276.20,
24 without application of paragraph (7) of that subdivision, shall
25 apply.

26 ~~(6)~~

27 (7) “Seasonal employment” means employment by a qualified
28 taxpayer that has regular and predictable substantial reductions in
29 trade or business operations.

30 (8) “Annual full-time equivalent” means either of the following:

31 (A) In the case of a full-time employee paid hourly wages,
32 “annual full-time equivalent” means the total number of hours
33 worked for the taxpayer by the employee (not to exceed 2,000
34 hours per employee) divided by 2,000.

35 (B) In the case of a salaried full-time employee, “annual
36 full-time equivalent” means the total number of weeks worked for
37 the taxpayer by the employee divided by 52.

38 (c) Except as provided in paragraph (2), the net increase in
39 qualified full-time employees of a qualified taxpayer shall be
40 determined by:

1 (1) (A) (i) If the state's average nonfarm employment, as
2 determined by the Franchise Tax Board based upon information
3 published by the Employment Development Department as of
4 March 15 of each calendar year, has not decreased for the
5 calendar years beginning on the third and the second January 1
6 immediately preceding the beginning of the current taxable year,
7 as compared with second and first calendar years respectively,
8 then the net increase in qualified full-time employees shall be
9 determined on an annual full-time equivalent basis based on the
10 amount of the increase of qualified full-time equivalent employees
11 in excess of the greatest of the number of qualified full-time
12 equivalent employees employed by the qualified taxpayer in any
13 of the three immediately preceding taxable years, as determined
14 under subparagraph (B).

15 (ii) The amount determined under clause (i) shall include the
16 fractional amount, if any, of the increase for the taxable year.

17 (B) The net increase in qualified full-time employees for the
18 current taxable year shall be determined by subtracting the amount
19 determined under clause (ii) from the amount determined under
20 clause (i). If the amount determined under clause (ii) is equal to
21 or exceeds the amount determined under clause (i), the amount
22 determined under this subparagraph shall be zero.

23 (i) (I) The total number of qualified full-time employees
24 employed in the current taxable year by the qualified taxpayer and
25 by any trade or business acquired by the qualified taxpayer during
26 the current taxable year.

27 (II) The greatest total number of qualified full-time employees
28 employed in any of the three preceding taxable years by the
29 qualified taxpayer and by any trade or business acquired by the
30 qualified taxpayer during the current taxable year.

31 (ii) The increase in the total number of full-time employees
32 (determined under the full-time equivalent rules of paragraph (8)
33 of subdivision (b)) employed by the qualified taxpayer in this state
34 shall be determined by subtracting the amount determined under
35 subclause (II) from the amount determined under subclause (I). If
36 the amount determined under subclause (II) is equal to or exceeds
37 the amount determined under subclause (I), the amount determined
38 under this clause shall be zero.

39 (I) The total number of full-time employees employed in this
40 state in the current taxable year by the qualified taxpayer and by

1 any trade or business acquired by the qualified taxpayer during
2 the current taxable year.

3 (II) The greatest total number of full-time employees of the
4 qualified taxpayer employed in this state in any of the three
5 preceding taxable years by the qualified taxpayer and by any trade
6 or business acquired by the qualified taxpayer during the current
7 taxable year.

8 (2) (A) (i) If there is a decrease in the state's nonfarm
9 employment, as determined by the Franchise Tax Board based
10 upon information published by the Employment Development
11 Department as of March 15 of each calendar year, for the calendar
12 years beginning on the third and the second January 1 immediately
13 preceding the current taxable year, the net increase in qualified
14 full-time employees shall be determined on an annual full-time
15 equivalent basis as the lesser of the amount determined under
16 subparagraph (C) or the amount determined under subparagraph
17 (B).

18 (ii) The amount determined under clause (i) shall include the
19 fractional amount, if any, of the increase for the taxable year.

20 (B) The increase in the total number of qualified full-time
21 employees shall be determined by subtracting the amount
22 determined under clause (ii) from the amount determined under
23 clause (i). If the amount determined under clause (ii) is equal to
24 or exceeds the amount determined under clause (i), the amount
25 determined under this subparagraph shall be zero.

26 (i) The total number of qualified full-time employees employed
27 in the current taxable year by the qualified taxpayer and by any
28 trade or business acquired by the qualified taxpayer during the
29 current taxable year.

30 (ii) The total number of qualified full-time employees employed
31 in the preceding taxable year by the qualified taxpayer and by any
32 trade or business acquired by the qualified taxpayer during the
33 current taxable year.

34 (C) The increase in the total number of full-time employees
35 (determined under the full-time equivalent rules of paragraph (8)
36 of subdivision (b)) employed by the qualified taxpayer in this state
37 shall be determined by subtracting the amount determined under
38 clause (ii) from the amount determined under clause (i). If the
39 amount determined under clause (ii) is equal to or exceeds the

1 amount determined under clause (i), the amount determined under
2 this subparagraph shall be zero.

3 (i) The total number of full-time employees employed in this
4 state in the current taxable year by the qualified taxpayer and by
5 any trade or business acquired by the qualified taxpayer during
6 the current taxable year.

7 (ii) The total number of full-time employees of the qualified
8 taxpayer employed in this state in the preceding taxable year by
9 the qualified taxpayer and by any trade or business acquired by
10 the qualified taxpayer during the current taxable year.

11 (3) For qualified taxpayers who first commence doing business
12 in this state during the taxable year, the number of qualified
13 full-time employees under subparagraph (B) of paragraph (1) and
14 the number of full-time employees under subparagraph (C) of
15 paragraph (2) for the preceding taxable year shall be zero.

16 (4) For purposes of determining the number of full-time
17 employees of the qualified taxpayer who are employed in this state
18 under paragraphs (1) and (2), only those employees who receive
19 wages that are subject to Division 6 (commencing with Section
20 13000) of the Unemployment Insurance Code from the qualified
21 taxpayer comprising more than 50 percent of that employee's total
22 wages received from the qualified taxpayer for the taxable year,
23 shall be included.

24 (5) For purposes of determining the increase in the number of
25 qualified full-time employees of a qualified taxpayer under this
26 section and Sections 17053.46, 17053.47, and 17053.74, the
27 increase shall be determined separately for the targeted tax area,
28 and each enterprise zone, manufacturing enhancement area, or
29 local agency military base recovery area with respect to which a
30 taxpayer is a qualified taxpayer.

31 (6) Any determination of the Franchise Tax Board under this
32 subdivision with respect to whether there is an increase, a
33 decrease, or no change in the state's nonfarm employment for any
34 calendar year shall be final and may not be reviewed in any
35 administrative or judicial proceeding, even if the data published
36 by the Employment Development Department as of March 15 of
37 any calendar year upon which the Franchise Tax Board relied in
38 making its determination is substantially revised and would
39 otherwise change which formula is applicable under this
40 subdivision.

1 ~~(e)~~

2 ~~(d)~~ If the qualified taxpayer is allowed a credit for qualified
3 wages pursuant to this section, only one credit shall be allowed to
4 the taxpayer under this part with respect to those qualified wages.

5 ~~(d)~~ The

6 ~~(e)~~ *For qualified employees who first commenced employment*
7 *in taxable years beginning on or after January 1, 1998, and before*
8 *January 1, 2011, the qualified taxpayer shall do both of the*
9 *following:*

10 (1) Obtain from the Employment Development Department, as
11 permitted by federal law, the local county or city Job Training
12 Partnership Act administrative entity, the local county GAIN office
13 or social services agency, or the local government administering
14 the targeted tax area, a certification that provides that a qualified
15 employee meets the eligibility requirements specified in clause
16 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
17 Employment Development Department may provide preliminary
18 screening and referral to a certifying agency. The Department of
19 Housing and Community Development shall develop regulations
20 governing the issuance of certificates pursuant to subdivision (g)
21 of Section 7097 of the Government Code, and shall develop forms
22 for this purpose.

23 (2) *For qualified employees who first commenced employment*
24 *in taxable years beginning on or after January 1, 1998, and before*
25 *January 1, 2011, for which, as of the later of July 1, 2011, or the*
26 *date the qualified employee first commenced employment, a*
27 *certification described in paragraph (1) has not been obtained*
28 *and a request for certification described in paragraph (1) has not*
29 *been previously submitted, then a request for certification*
30 *described in paragraph (1) with respect to that employee shall be*
31 *submitted to the certifying entity no later than the date that is the*
32 *later of 90 days after July 1, 2011, or 30 days after the date the*
33 *qualified employee first commenced employment. A credit shall*
34 *be allowed under this section with respect to a qualified employee*
35 *described in the preceding sentence only if a request for*
36 *certification was timely submitted in accordance with this*
37 *paragraph.*

38 ~~(2)~~

39 (3) Retain a copy of the certification and provide it upon request
40 to the Franchise Tax Board.

1 ~~(e)~~

2 ~~(f)~~ (1) For purposes of this section:

3 (A) All employees of trades or businesses, which are not
4 incorporated, that are under common control shall be treated as
5 employed by a single taxpayer.

6 (B) The credit, if any, allowable by this section with respect to
7 each trade or business shall be determined by reference to its
8 proportionate share of the expense of the qualified wages giving
9 rise to the credit, and shall be allocated in that manner.

10 (C) Principles that apply in the case of controlled groups of
11 corporations, as specified in subdivision (d) of Section 23634,
12 shall apply with respect to determining employment.

13 (2) If an employer acquires the major portion of a trade or
14 business of another employer (hereinafter in this paragraph referred
15 to as the “predecessor”) or the major portion of a separate unit of
16 a trade or business of a predecessor, then, for purposes of applying
17 this section (other than subdivision-~~(f)~~ (g)) for any calendar year
18 ending after that acquisition, the employment relationship between
19 a qualified employee and an employer shall not be treated as
20 terminated if the employee continues to be employed in that trade
21 or business.

22 ~~(f)~~

23 ~~(g)~~ (1) (A) ~~If~~ *For qualified employees who first commenced*
24 *employment with at qualified taxpayer in taxable years beginning*
25 *on or after January 1, 1998, and before January 1, 2011, if the*
26 employment, other than seasonal employment, of any qualified
27 employee, with respect to whom qualified wages are taken into
28 account under subdivision (a) is terminated by the qualified
29 taxpayer at any time during the first 270 days of that employment
30 (whether or not consecutive) or before the close of the 270th
31 calendar day after the day in which that employee completes 90
32 days of employment with the qualified taxpayer, the tax imposed
33 by this part for the taxable year in which that employment is
34 terminated shall be increased by an amount equal to the credit
35 allowed under subdivision (a) for that taxable year and all prior
36 taxable years attributable to qualified wages paid or incurred with
37 respect to that employee.

38 (B) If the seasonal employment of any qualified employee, with
39 respect to whom qualified wages are taken into account under
40 subdivision (a) is not continued by the qualified taxpayer for a

1 period of 270 days of employment during the 60-month period
2 beginning with the day the qualified employee commences seasonal
3 employment with the qualified taxpayer, the tax imposed by this
4 part, for the taxable year that includes the 60th month following
5 the month in which the qualified employee commences seasonal
6 employment with the qualified taxpayer, shall be increased by an
7 amount equal to the credit allowed under subdivision (a) for that
8 taxable year and all prior taxable years attributable to qualified
9 wages paid or incurred with respect to that qualified employee.

10 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
11 any of the following:

12 (i) A termination of employment of a qualified employee who
13 voluntarily leaves the employment of the qualified taxpayer.

14 (ii) A termination of employment of a qualified employee who,
15 before the close of the period referred to in subparagraph (A) of
16 paragraph (1), becomes disabled and unable to perform the services
17 of that employment, unless that disability is removed before the
18 close of that period and the qualified taxpayer fails to offer
19 reemployment to that employee.

20 (iii) A termination of employment of a qualified employee, if
21 it is determined that the termination was due to the misconduct (as
22 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
23 the California Code of Regulations) of that employee.

24 (iv) A termination of employment of a qualified employee due
25 to a substantial reduction in the trade or business operations of the
26 qualified taxpayer.

27 (v) A termination of employment of a qualified employee, if
28 that employee is replaced by other qualified employees so as to
29 create a net increase in both the number of employees and the
30 hours of employment.

31 (B) Subparagraph (B) of paragraph (1) shall not apply to any
32 of the following:

33 (i) A failure to continue the seasonal employment of a qualified
34 employee who voluntarily fails to return to the seasonal
35 employment of the qualified taxpayer.

36 (ii) A failure to continue the seasonal employment of a qualified
37 employee who, before the close of the period referred to in
38 subparagraph (B) of paragraph (1), becomes disabled and unable
39 to perform the services of that seasonal employment, unless that
40 disability is removed before the close of that period and the

1 qualified taxpayer fails to offer seasonal employment to that
2 qualified employee.

3 (iii) A failure to continue the seasonal employment of a qualified
4 employee, if it is determined that the failure to continue the
5 seasonal employment was due to the misconduct (as defined in
6 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
7 Code of Regulations) of that qualified employee.

8 (iv) A failure to continue seasonal employment of a qualified
9 employee due to a substantial reduction in the regular seasonal
10 trade or business operations of the qualified taxpayer.

11 (v) A failure to continue the seasonal employment of a qualified
12 employee, if that qualified employee is replaced by other qualified
13 employees so as to create a net increase in both the number of
14 seasonal employees and the hours of seasonal employment.

15 (C) For purposes of paragraph (1), the employment relationship
16 between the qualified taxpayer and a qualified employee shall not
17 be treated as terminated by reason of a mere change in the form
18 of conducting the trade or business of the qualified taxpayer, if the
19 qualified employee continues to be employed in that trade or
20 business and the qualified taxpayer retains a substantial interest
21 in that trade or business.

22 (3) Any increase in tax under paragraph (1) shall not be treated
23 as tax imposed by this part for purposes of determining the amount
24 of any credit allowable under this part.

25 ~~(g)~~

26 (h) In the case of an estate or trust, both of the following apply:

27 (1) The qualified wages for any taxable year shall be apportioned
28 between the estate or trust and the beneficiaries on the basis of the
29 income of the estate or trust allocable to each.

30 (2) Any beneficiary to whom any qualified wages have been
31 apportioned under paragraph (1) shall be treated, for purposes of
32 this part, as the employer with respect to those wages.

33 ~~(h)~~

34 (i) For purposes of this section, “targeted tax area” means an
35 area designated pursuant to Chapter 12.93 (commencing with
36 Section 7097) of Division 7 of Title 1 of the Government Code.

37 ~~(i)~~

38 (j) (1) In the case where the credit otherwise allowed under this
39 section exceeds the “net tax” for the taxable year, that portion of
40 the credit that exceeds the “net tax” may be carried over and added

to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(2) Notwithstanding paragraph (1), for taxable years beginning on or after January 1, 2011:

(A) In the case of any portion of a credit available for carryover and attributable to a taxable year beginning before January 1, 2006, that portion shall not be carried forward.

(B) In the case of credits first allowed in taxable years beginning on or after January 1, 2006, the carryover period shall be five years from the year for which the credit was first allowed.

(j)

(k) (1) The amount of the credit otherwise allowed under this section and Section 17053.33, including any credit carryover from prior years, that may reduce the “net tax” for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer’s business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer’s California source business income that is apportioned to the targeted tax area. For that purpose, the taxpayer’s business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the targeted tax area in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the targeted tax area by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer’s real and tangible personal property owned or rented and used in the targeted tax area during the taxable year, and the denominator of which is the average value of all the taxpayer’s real and tangible personal property owned or rented and used in this state during the taxable year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the targeted tax area during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the “net tax” for the taxable year, as provided in subdivision ~~(h)~~ (j).

(5) In the event that a credit carryover is allowable under subdivision ~~(h)~~ (j) for any taxable year after the targeted tax area expiration date, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

(l) For taxable years beginning on or after January 1, 2011, the credit allowed by this section must be claimed on a timely filed original return of the qualified taxpayer.

SEC. 4. Section 17053.45 of the Revenue and Taxation Code is amended to read:

17053.45. (a) For each taxable year beginning on or after January 1, 1995, there shall be allowed as a credit against the “net tax” ~~(as tax,”~~ as defined by Section ~~17039)~~ 17039, an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property to the extent that the qualified property does not exceed a value of one million dollars (\$1,000,000).

(b) For purposes of this section:

(1) “LAMBRA” means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(2) “Taxpayer” means a taxpayer that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second

1 taxable year after commencing business operations in the
2 LAMBRA. For taxpayers who commence doing business in this
3 state with their LAMBRA business operation, the number of
4 employees for the taxable year prior to commencing business
5 operations in the LAMBRA shall be zero. If the taxpayer has a net
6 increase in jobs in the state, the credit shall be allowed only if one
7 or more full-time employees is employed within the LAMBRA.

8 (B) The total number of employees employed in the LAMBRA
9 shall equal the sum of both of the following:

10 (i) The total number of hours worked in the LAMBRA for the
11 taxpayer by employees (not to exceed 2,000 hours per employee)
12 who are paid an hourly wage divided by 2,000.

13 (ii) The total number of months worked in the LAMBRA for
14 the taxpayer by employees who are salaried employees divided
15 by 12.

16 (C) In the case of a taxpayer who first commences doing
17 business in the LAMBRA during the taxable year, for purposes of
18 clauses (i) and (ii), respectively, of subparagraph (B), the divisors
19 “2,000” and “12” shall be multiplied by a fraction, the numerator
20 of which is the number of months of the taxable year that the
21 taxpayer was doing business in the LAMBRA and the denominator
22 of which is 12.

23 (3) “Qualified property” means property that is each of the
24 following:

25 (A) Purchased by the taxpayer for exclusive use in a trade or
26 business conducted within a LAMBRA.

27 (B) Purchased before the date the LAMBRA designation expires,
28 is no longer binding, or becomes inoperative.

29 (C) Any of the following:

30 (i) High technology equipment, including, but not limited to,
31 computers and electronic processing equipment.

32 (ii) Aircraft maintenance equipment, including, but not limited
33 to, engine stands, hydraulic mules, power carts, test equipment,
34 handtools, aircraft start carts, and tugs.

35 (iii) Aircraft components, including, but not limited to, engines,
36 fuel control units, hydraulic pumps, avionics, starts, wheels, and
37 tires.

38 (iv) Section 1245 property, as defined in Section 1245(a)(3) of
39 the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall be allowed only for qualified property manufactured in California unless qualified property of a comparable quality and price is not available for timely purchase and delivery from a California manufacturer.

(d) In the case where the credit otherwise allowed under this section exceeds the “net tax” for the taxable year, that portion of the credit which exceeds the “net tax” may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) (A) The amount of credit otherwise allowed under this section and Section 17053.46, including any credit carryover from prior years, that may reduce the “net tax” for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer’s business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

~~(2)~~

(B) Attributable income is that portion of the taxpayer’s California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer’s business income that is attributable to sources in this state shall first be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, as modified for purposes of this section in accordance with ~~paragraph (3)~~ *subparagraph (C)*.

~~(3)~~

(C) Income shall be apportioned to a LAMBRA by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

~~(A)~~

(i) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the LAMBRA during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

~~(B)~~

(ii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

~~(4)~~

(D) (1) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

(2) *Notwithstanding paragraph (1), for taxable years beginning on or after January 1, 2011:*

(A) *In the case of any portion of a credit available for carryover and attributable to a taxable year beginning before January 1, 2006, that portion shall not be carried forward.*

(B) *In the case of credits first allowed in taxable years beginning on or after January 1, 2006, the carryover period shall be five years from the year for which the credit was first allowed.*

(g) (1) If the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed, with respect to that property, shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(2) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(h) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(i) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998.

(j) *For taxable years beginning on or after January 1, 2011, the credit allowed by this section must be claimed on a timely filed original return of the taxpayer.*

SEC. 5. Section 17053.46 of the Revenue and Taxation Code is amended to read:

17053.46. (a) (1) For each taxable year beginning on or after January 1, 1995, there shall be allowed as a credit against the “~~net tax~~” (as “*net tax*,” defined in Section ~~17039~~) 17039, to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the taxable year for employment in the LAMBRA. ~~The~~ *For qualified disadvantaged individuals or qualified displaced employees who first commenced employment in taxable years beginning on or after January 1, 1995, and before January 1, 2011, the credit shall be equal to the sum of each of the following:*

~~(1)~~

(A) Fifty percent of the qualified wages in the first year of employment.

~~(2)~~

(B) Forty percent of the qualified wages in the second year of employment.

~~(3)~~

(C) Thirty percent of the qualified wages in the third year of employment.

~~(4)~~

(D) Twenty percent of the qualified wages in the fourth year of employment.

(E) Ten percent of the qualified wages in the fifth year of employment.

(2) *For qualified disadvantaged individuals or qualified displaced employees who first commence employment in a taxable year beginning on or after January 1, 2011, the credit shall be equal to five thousand dollars (\$5,000) for each net increase in qualified full-time employees, as specified in subdivision (c), employed during the taxable year by the qualified taxpayer.*

(b) For purposes of this section:

1 (1) ~~“Qualified”~~ *For taxable years beginning on or after January*
2 *1, 1995, and before January 1, 2011, “qualified wages” means:*

3 (A) That portion of wages paid or incurred by the employer
4 during the taxable year to qualified disadvantaged individuals or
5 qualified displaced employees that does not exceed 150 percent
6 of the minimum wage.

7 (B) The total amount of qualified wages which may be taken
8 into account for purposes of claiming the credit allowed under this
9 section shall not exceed two million dollars (\$2,000,000) per
10 taxable year.

11 (C) Wages received during the 60-month period beginning with
12 the first day the individual commences employment with the
13 taxpayer. Reemployment in connection with any increase, including
14 a regularly occurring seasonal increase, in the trade or business
15 operations of the qualified taxpayer does not constitute
16 commencement of employment for purposes of this section.

17 (D) Qualified wages do not include any wages paid or incurred
18 by the qualified taxpayer on or after the LAMBRA expiration date.
19 However, wages paid or incurred with respect to qualified
20 disadvantaged individuals or qualified displaced employees who
21 are employed by the qualified taxpayer within the LAMBRA within
22 the 60-month period prior to the LAMBRA expiration date shall
23 continue to qualify for the credit under this section after the
24 LAMBRA expiration date, in accordance with all provisions of
25 this section applied as if the LAMBRA designation were still in
26 existence and binding.

27 (2) *“Acquired” includes any gift, inheritance, transfer incident*
28 *to divorce, or any other transfer, whether or not for consideration.*

29 ~~(2)~~

30 (3) “Minimum wage” means the wage established by the
31 Industrial Welfare Commission as provided for in Chapter 1
32 (commencing with Section 1171) of Part 4 of Division 2 of the
33 Labor Code.

34 ~~(3)~~

35 (4) “LAMBRA” means a local agency military base recovery
36 area designated in accordance with Section 7114 of the Government
37 Code.

38 ~~(4)~~

39 (5) “Qualified disadvantaged individual” means an individual
40 who satisfies all of the following requirements:

1 (A) (i) At least 90 percent of whose services for the taxpayer
2 during the taxable year are directly related to the conduct of the
3 taxpayer's trade or business located in a LAMBRA.

4 (ii) ~~Who performs~~ *Performs* at least 50 percent of his or her
5 services for the taxpayer during the taxable year in the LAMBRA.

6 (B) Who is hired by the employer after the designation of the
7 area as a LAMBRA in which the individual's services were
8 primarily performed.

9 (C) ~~Who~~ *For an individual who first commenced employment*
10 *in taxable years beginning on or after January 1, 1995, and before*
11 *January 1, 2011, he or she* is any of the following immediately
12 preceding the individual's commencement of employment with
13 the taxpayer:

14 (i) An individual who has been determined eligible for services
15 under the federal Job Training Partnership Act (29 U.S.C. Sec.
16 1501 et seq.).

17 (ii) Any voluntary or mandatory registrant under the Greater
18 Avenues for Independence Act of 1985 as provided pursuant to
19 Article 3.2 (commencing with Section 11320) of Chapter 2 of Part
20 3 of Division 9 of the Welfare and Institutions Code.

21 (iii) An economically disadvantaged individual age 16 years or
22 older.

23 (iv) A dislocated worker who meets any of the following
24 conditions:

25 (I) Has been terminated or laid off or who has received a notice
26 of termination or layoff from employment, is eligible for or has
27 exhausted entitlement to unemployment insurance benefits, and
28 is unlikely to return to his or her previous industry or occupation.

29 (II) Has been terminated or has received a notice of termination
30 of employment as a result of any permanent closure or any
31 substantial layoff at a plant, facility, or enterprise, including an
32 individual who has not received written notification but whose
33 employer has made a public announcement of the closure or layoff.

34 (III) Is long-term unemployed and has limited opportunities for
35 employment or reemployment in the same or a similar occupation
36 in the area in which the individual resides, including an individual
37 55 years of age or older who may have substantial barriers to
38 employment by reason of age.

39 (IV) Was self-employed (including farmers and ranchers) and
40 is unemployed as a result of general economic conditions in the

1 community in which he or she resides or because of natural
2 disasters.

3 (V) Was a civilian employee of the Department of Defense
4 employed at a military installation being closed or realigned under
5 the Defense Base Closure and Realignment Act of 1990.

6 (VI) Was an active member of the Armed Forces or National
7 Guard as of September 30, 1990, and was either involuntarily
8 separated or separated pursuant to a special benefits program.

9 (VII) Experiences chronic seasonal unemployment and
10 underemployment in the agriculture industry, aggravated by
11 continual advancements in technology and mechanization.

12 (VIII) Has been terminated or laid off or has received a notice
13 of termination or layoff as a consequence of compliance with the
14 Clean Air Act.

15 (v) An individual who is enrolled in or has completed a state
16 rehabilitation plan or is a service-connected disabled veteran,
17 veteran of the Vietnam era, or veteran who is recently separated
18 from military service.

19 (vi) An ex-offender. An individual shall be treated as convicted
20 if he or she was placed on probation by a state court without a
21 finding of guilty.

22 (vii) A recipient of:

23 (I) Federal Supplemental Security Income benefits.

24 (II) Aid to Families with Dependent Children.

25 (III) Food stamps.

26 (IV) State and local general assistance.

27 (viii) Is a member of a federally recognized Indian tribe, band,
28 or other group of Native American descent.

29 *(D) For a qualified disadvantaged individual who first*
30 *commences employment in taxable years beginning on or after*
31 *January 1, 2011, that individual is a “qualified full-time employee”*
32 *if, in addition to any other requirement imposed by this section,*
33 *he or she was either:*

34 *(i) Paid wages by the qualified taxpayer for services of not less*
35 *than an average of 35 per hours per week.*

36 *(ii) A salaried employee and was paid compensation during the*
37 *taxable year for full-time employment, within the meaning of*
38 *Section 515 of the Labor Code, by the qualified employer.*

39 ~~(5)~~

1 (6) (A) “Qualified taxpayer” means a taxpayer or partnership
2 that conducts a trade or business within a LAMBRA and, for the
3 first two taxable years, has a net increase in jobs (defined as 2,000
4 paid hours per employee per year) of one or more employees in
5 the LAMBRA.

6 ~~(A)~~

7 (B) The net increase in the number of jobs shall be determined
8 by subtracting the total number of full-time employees (defined
9 as 2,000 paid hours per employee per year) the taxpayer employed
10 in this state in the taxable year prior to commencing business
11 operations in the LAMBRA from the total number of full-time
12 employees the taxpayer employed in this state during the second
13 taxable year after commencing business operations in the
14 LAMBRA. For taxpayers who commence doing business in this
15 state with their LAMBRA business operation, the number of
16 employees for the taxable year prior to commencing business
17 operations in the LAMBRA shall be zero. If the taxpayer has a net
18 increase in jobs in the state, the credit shall be allowed only if one
19 or more full-time employees is employed within the LAMBRA.

20 ~~(B)~~

21 (C) The total number of employees employed in the LAMBRA
22 shall equal the sum of both of the following:

23 (i) The total number of hours worked in the LAMBRA for the
24 taxpayer by employees (not to exceed 2,000 hours per employee)
25 who are paid an hourly wage divided by 2,000.

26 (ii) The total number of months worked in the LAMBRA for
27 the taxpayer by employees who are salaried employees divided
28 by 12.

29 ~~(C)~~

30 (D) In the case of a taxpayer who first commences doing
31 business in the LAMBRA during the taxable year, for purposes of
32 clauses (i) and (ii), respectively, of subparagraph ~~(B)~~ (C), the
33 divisors “2,000” and “12” shall be multiplied by a fraction, the
34 numerator of which is the number of months of the taxable year
35 that the taxpayer was doing business in the LAMBRA and the
36 denominator of which is 12.

37 (E) (i) *Notwithstanding subparagraph (A), a “qualified*
38 *taxpayer” shall not include any person or entity described in*
39 *subparagraph (A) that first commences business activity in a*
40 *LAMBRA during the taxable year and has, within 24 months before*

1 *the taxpayer first commenced business activity in the LAMBRA,*
2 *had an overall reduction in the number of employees employed by*
3 *the taxpayer within the state outside of the LAMBRA, unless that*
4 *person or entity has made a written offer of employment to each*
5 *of the employees employed at the location within the state where*
6 *employment was reduced for such employees to continue their*
7 *employment with that person or entity within the LAMBRA.*

8 *(ii) In determining whether the taxpayer has first commenced*
9 *doing business in the LAMBRA during the taxable year, the*
10 *provisions of subdivision (f) of Section 17276.20, without*
11 *application of paragraph (7) of that subdivision, shall apply.*

12 *(iii) The written offer referred to in this subparagraph shall be*
13 *made prior to the termination of employment at the location within*
14 *the state that is outside the LAMBRA.*

15 *(iv) If any employee described in clause (i) does not receive a*
16 *timely written offer, the person or entity shall not be a qualified*
17 *taxpayer for that taxable year, even if other employees do receive*
18 *a written offer.*

19 *(v) A person or entity shall be required to provide, upon request*
20 *of the Franchise Tax Board, written certification, under penalty*
21 *of perjury, that the requirements of this subparagraph were met.*

22 *(vi) All employees of the trades or businesses that are treated*
23 *as related under Section 267, 318, or 707 of the Internal Revenue*
24 *Code shall be treated as employed by a single taxpayer.*

25 ~~(6)~~

26 *(7) “Qualified displaced employee” means an individual who*
27 *satisfies all of the following requirements:*

28 *(A) Any civilian or military employee of a base or former base*
29 *who has been displaced as a result of a federal base closure act.*

30 *(B) (i) At least 90 percent of whose services for the taxpayer*
31 *during the taxable year are directly related to the conduct of the*
32 *taxpayer’s trade or business located in a LAMBRA.*

33 *(ii) Who performs at least 50 percent of his or her services for*
34 *the taxpayer during the taxable year in a LAMBRA.*

35 *(C) Who is hired by the employer after the designation of the*
36 *area in which services were performed as a LAMBRA.*

37 *(D) For an individual who first commences employment in*
38 *taxable years beginning on or after January 1, 2011, and who*
39 *meets the requirements of this paragraph other than the*
40 *requirements of subparagraph (A), that individual is a “qualified*

1 *full-time employee” if, in addition to any other requirement*
2 *imposed by this section, he or she was either:*

3 *(i) Paid wages by the qualified taxpayer for services of not less*
4 *than an average of 35 per hours per week.*

5 *(ii) A salaried employee and was paid compensation during the*
6 *taxable year for full-time employment, within the meaning of*
7 *Section 515 of the Labor Code, by the qualified employer.*

8 ~~(7)~~

9 *(8) “Seasonal employment” means employment by a qualified*
10 *taxpayer that has regular and predictable substantial reductions in*
11 *trade or business operations.*

12 ~~(8)~~

13 *(9) “LAMBRA expiration date” means the date the LAMBRA*
14 *designation expires, is no longer binding, or becomes inoperative.*

15 *(10) “Annual full-time equivalent” means either of the*
16 *following:*

17 *(A) In the case of a full-time employee paid hourly wages,*
18 *“annual full-time equivalent” means the total number of hours*
19 *worked for the taxpayer by the employee (not to exceed 2,000*
20 *hours per employee) divided by 2,000.*

21 *(B) In the case of a salaried full-time employee, “annual*
22 *full-time equivalent” means the total number of weeks worked for*
23 *the taxpayer by the employee divided by 52.*

24 *(c) Except as provided in paragraph (2), the net increase in*
25 *qualified full-time employees of a qualified taxpayer shall be*
26 *determined by paragraph (1):*

27 *(1) (A) (i) If the state’s average nonfarm employment, as*
28 *determined by the Franchise Tax Board based upon information*
29 *published by the Employment Development Department as of*
30 *March 15 of each calendar year, has not decreased for the*
31 *calendar years beginning on the third and the second January 1*
32 *immediately preceding the beginning of the current taxable year,*
33 *as compared with second and first calendar years respectively,*
34 *then the net increase in qualified full-time employees shall be*
35 *determined on an annual full-time equivalent basis based on the*
36 *amount of the increase of qualified full-time equivalent employees*
37 *in excess of the greatest of the number of qualified full-time*
38 *equivalent employees employed by the qualified taxpayer in any*
39 *of the three immediately preceding taxable years, as determined*
40 *under subparagraph (B).*

1 (ii) *The amount determined under clause (i) shall include the*
2 *fractional amount, if any, of the increase for the taxable year.*

3 (B) *The net increase in qualified full-time employees for the*
4 *current taxable year shall be determined by subtracting the amount*
5 *determined under clause (ii) from the amount determined under*
6 *clause (i). If the amount determined under clause (ii) is equal to*
7 *or exceeds the amount determined under clause (i), the amount*
8 *determined under this subparagraph shall be zero.*

9 (i) (I) *The total number of qualified full-time employees*
10 *employed in the current taxable year by the qualified taxpayer and*
11 *by any trade or business acquired by the qualified taxpayer during*
12 *the current taxable year.*

13 (II) *The greatest total number of qualified full-time employees*
14 *employed in any of the three preceding taxable years by the*
15 *qualified taxpayer and by any trade or business acquired by the*
16 *qualified taxpayer during the current taxable year.*

17 (ii) *The increase in the total number of full-time employees*
18 *(determined under the full-time equivalent rules of paragraph (10)*
19 *of subdivision (b)) employed by the qualified taxpayer in this state*
20 *shall be determined by subtracting the amount determined under*
21 *subclause (II) from the amount determined under subclause (I). If*
22 *the amount determined under subclause (II) is equal to or exceeds*
23 *the amount determined under subclause (I), the amount determined*
24 *under this clause shall be zero.*

25 (I) *The total number of full-time employees employed in this*
26 *state in the current taxable year by the qualified taxpayer and by*
27 *any trade or business acquired by the qualified taxpayer during*
28 *the current taxable year.*

29 (II) *The greatest total number of full-time employees of the*
30 *qualified taxpayer employed in this state in any of the three*
31 *preceding taxable years by the qualified taxpayer and by any trade*
32 *or business acquired by the qualified taxpayer during the current*
33 *taxable year.*

34 (2) (A) (i) *If there is a decrease in the state's nonfarm*
35 *employment, as determined by the Franchise Tax Board based*
36 *upon information published by the Employment Development*
37 *Department as of March 15 of each calendar year, for the calendar*
38 *years beginning on the third and the second January 1 immediately*
39 *preceding the current taxable year, the net increase in qualified*
40 *full-time employees shall be determined on an annual full-time*

1 equivalent basis as the lesser of the amount determined under
2 subparagraph (C) or the amount determined under subparagraph
3 (B).

4 (ii) The amount determined under clause (i) shall include the
5 fractional amount, if any, of the increase for the taxable year.

6 (B) The increase in the total number of qualified full-time
7 employees shall be determined by subtracting the amount
8 determined under clause (ii) from the amount determined under
9 clause (i). If the amount determined under clause (ii) is equal to
10 or exceeds the amount determined under clause (i), the amount
11 determined under this subparagraph shall be zero.

12 (i) The total number of qualified full-time employees employed
13 in the current taxable year by the qualified taxpayer and by any
14 trade or business acquired by the qualified taxpayer during the
15 current taxable year.

16 (ii) The total number of qualified full-time employees employed
17 in the preceding taxable year by the qualified taxpayer and by any
18 trade or business acquired by the qualified taxpayer during the
19 current taxable year.

20 (C) The increase in the total number of full-time employees
21 (determined under the full-time equivalent rules of paragraph (10)
22 of subdivision (b)) employed by the qualified taxpayer in this state
23 shall be determined by subtracting the amount determined under
24 clause (ii) from the amount determined under clause (i). If the
25 amount determined under clause (ii) is equal to or exceeds the
26 amount determined under clause (i), the amount determined under
27 this subparagraph shall be zero.

28 (i) The total number of full-time employees employed in this
29 state in the current taxable year by the qualified taxpayer and by
30 any trade or business acquired by the qualified taxpayer during
31 the current taxable year.

32 (ii) The total number of full-time employees of the qualified
33 taxpayer employed in this state in the preceding taxable year by
34 the qualified taxpayer and by any trade or business acquired by
35 the qualified taxpayer during the current taxable year.

36 (3) For qualified taxpayers who first commence doing business
37 in this state during the taxable year, the number of qualified
38 full-time employees under subparagraph (B) of paragraph (1) and
39 the number of full-time employees under subparagraph (C) of
40 paragraph (2) for the preceding taxable year shall be zero.

1 (4) For purposes of determining the number of full-time
2 employees of the qualified taxpayer who are employed in this state
3 under paragraphs (1) and (2), only those employees who receive
4 wages that are subject to Division 6 (commencing with Section
5 13000) of the Unemployment Insurance Code from the qualified
6 taxpayer comprising more than 50 percent of that employee's total
7 wages received from the qualified taxpayer for the taxable year,
8 shall be included.

9 (5) For purposes of determining the increase in the number of
10 qualified full-time employees of a qualified taxpayer under this
11 section and Sections 17053.34, 17053.47, and 17053.74, the
12 increase shall be determined separately for the targeted tax area,
13 and each enterprise zone, manufacturing enhancement area, or
14 local agency military base recovery area with respect to which a
15 taxpayer is a qualified taxpayer.

16 (6) Any determination of the Franchise Tax Board under this
17 subdivision with respect to whether there is an increase, a
18 decrease, or no change in the state's nonfarm employment for any
19 calendar year shall be final and may not be reviewed in any
20 administrative or judicial proceeding, even if the data published
21 by the Employment Development Department as of March 15 of
22 any calendar year upon which the Franchise Tax Board relied in
23 making its determination is substantially revised and would
24 otherwise change which formula is applicable under this
25 subdivision.

26 (e)

27 (d) For qualified disadvantaged individuals or qualified
28 displaced employees hired on or after January 1, 2001, and before
29 January 1, 2011, the taxpayer shall do both of the following:

30 (1) Obtain from the Employment Development Department, as
31 permitted by federal law, the local county or city Job Training
32 Partnership Act administrative entity, the local county GAIN office
33 or social services agency, or the local government administering
34 the LAMBRA, a certification that provides that a qualified
35 disadvantaged individual or qualified displaced employee meets
36 the eligibility requirements specified in subparagraph (C) of
37 paragraph (4) of subdivision (b) or subparagraph (A) of paragraph
38 (6) of subdivision (b). The Employment Development Department
39 may provide preliminary screening and referral to a certifying
40 agency. The Department of Housing and Community Development

1 shall develop regulations governing the issuance of certificates
2 pursuant to Section 7114.2 of the Government Code and shall
3 develop forms for this purpose.

4 *(2) For any qualified disadvantaged individual or qualified*
5 *displaced employee who first commenced employment in taxable*
6 *years beginning on or after January 1, 2001, and before January*
7 *1, 2011, for which, as of the later of July 1, 2011, or the date the*
8 *qualified disadvantaged individual or qualified displaced employee*
9 *first commenced employment, a certification described in*
10 *paragraph (1) has not been obtained and a request for certification*
11 *described in paragraph (1) has not been previously submitted,*
12 *then a request for certification described in paragraph (1) with*
13 *respect to that employee shall be submitted to the certifying entity*
14 *no later than the date that is the later of 90 days after July 1, 2011,*
15 *or 30 days after the date the qualified disadvantaged individual*
16 *or qualified displaced employee first commenced employment. A*
17 *credit shall be allowed under this section with respect to a qualified*
18 *disadvantaged individual or qualified displaced employee*
19 *described in the preceding sentence only if a request for*
20 *certification was timely submitted in accordance with this*
21 *paragraph.*

22 ~~(2)~~

23 (3) Retain a copy of the certification and provide it upon request
24 to the Franchise Tax Board.

25 ~~(d)~~

26 (e) (1) For purposes of this section, ~~both of~~ the following apply:

27 (A) All employees of trades or businesses that are under
28 common control shall be treated as employed by a single employer.

29 (B) The credit (if any) allowable by this section with respect to
30 each trade or business shall be determined by reference to its
31 proportionate share of the qualified wages giving rise to the credit.

32 The regulations prescribed under this paragraph shall be based
33 on principles similar to the principles that apply in the case of
34 controlled groups of corporations as specified in subdivision (e)
35 of Section 23622.

36 (2) If an employer acquires the major portion of a trade or
37 business of another employer (hereinafter in this paragraph referred
38 to as the “predecessor”) or the major portion of a separate unit of
39 a trade or business of a predecessor, then, for purposes of applying
40 this section (other than subdivision (d)) for any calendar year

ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e)

(f) (1) (A) ~~If~~ *For qualified disadvantaged individuals or qualified displaced employees who first commenced employment in taxable years beginning on or after January 1, 1995, and before January 1, 2011, if* the employment, other than seasonal employment, of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled to perform the services of that employment,

1 unless that disability is removed before the close of that period
2 and the taxpayer fails to offer reemployment to that individual.

3 (iii) A termination of employment of an individual, if it is
4 determined that the termination was due to the misconduct (as
5 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
6 the California Code of Regulations) of that individual.

7 (iv) A termination of employment of an individual due to a
8 substantial reduction in the trade or business operations of the
9 taxpayer.

10 (v) A termination of employment of an individual, if that
11 individual is replaced by other qualified employees so as to create
12 a net increase in both the number of employees and the hours of
13 employment.

14 (B) Subparagraph (B) of paragraph (1) shall not apply to any
15 of the following:

16 (i) A failure to continue the seasonal employment of a qualified
17 disadvantaged individual who voluntarily fails to return to the
18 seasonal employment of the qualified taxpayer.

19 (ii) A failure to continue the seasonal employment of a qualified
20 disadvantaged individual who, before the close of the period
21 referred to in subparagraph (B) of paragraph (1), becomes disabled
22 and unable to perform the services of that seasonal employment,
23 unless that disability is removed before the close of that period
24 and the qualified taxpayer fails to offer seasonal employment to
25 that individual.

26 (iii) A failure to continue the seasonal employment of a qualified
27 disadvantaged individual, if it is determined that the failure to
28 continue the seasonal employment was due to the misconduct (as
29 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
30 the California Code of Regulations) of that qualified disadvantaged
31 individual.

32 (iv) A failure to continue seasonal employment of a qualified
33 disadvantaged individual due to a substantial reduction in the
34 regular seasonal trade or business operations of the qualified
35 taxpayer.

36 (v) A failure to continue the seasonal employment of a qualified
37 disadvantaged individual, if that individual is replaced by other
38 qualified displaced employees so as to create a net increase in both
39 the number of seasonal employees and the hours of seasonal
40 employment.

1 (C) For purposes of paragraph (1), the employment relationship
2 between the taxpayer and an employee shall not be treated as
3 terminated by reason of a mere change in the form of conducting
4 the trade or business of the taxpayer, if the employee continues to
5 be employed in that trade or business and the taxpayer retains a
6 substantial interest in that trade or business.

7 (3) Any increase in tax under paragraph (1) shall not be treated
8 as tax imposed by this part for purposes of determining the amount
9 of any credit allowable under this part.

10 (4) At the close of the second taxable year, if the taxpayer has
11 not increased the number of its employees as determined by
12 paragraph (5) of subdivision (b), then the amount of the credit
13 previously claimed shall be added to the taxpayer's net tax for the
14 taxpayer's second taxable year.

15 ~~(f)~~

16 (g) In the case of an estate or trust, both of the following apply:

17 (1) The qualified wages for any taxable year shall be apportioned
18 between the estate or trust and the beneficiaries on the basis of the
19 income of the estate or trust allocable to each.

20 (2) Any beneficiary to whom any qualified wages have been
21 apportioned under paragraph (1) shall be treated (for purposes of
22 this part) as the employer with respect to those wages.

23 ~~(g)~~

24 (h) The credit shall be reduced by the credit allowed under
25 Section 17053.7. The credit shall also be reduced by the federal
26 credit allowed under Section 51 of the Internal Revenue Code.

27 In addition, any deduction otherwise allowed under this part for
28 the wages or salaries paid or incurred by the taxpayer upon which
29 the credit is based shall be reduced by the amount of the credit,
30 prior to any reduction required by subdivision (h) or (i).

31 ~~(h)~~

32 (i) (1) In the case where the credit otherwise allowed under this
33 section exceeds the "net tax" for the taxable year, that portion of
34 the credit that exceeds the "net tax" may be carried over and added
35 to the credit, if any, in succeeding years, until the credit is
36 exhausted. The credit shall be applied first to the earliest taxable
37 years possible.

38 (2) *Notwithstanding paragraph (1), for taxable years beginning*
39 *on or after January 1, 2011:*

1 (A) *In the case of any portion of a credit available for carryover*
2 *and attributable to a taxable year beginning before January 1,*
3 *2006, that portion shall not be carried forward.*

4 (B) *In the case of credits first allowed in taxable years beginning*
5 *on or after January 1, 2006, the carryover period shall be five*
6 *years from the year for which the credit was first allowed.*

7 (†)

8 (j) (1) The amount of credit otherwise allowed under this section
9 and Section 17053.45, including prior year credit carryovers, that
10 may reduce the “net tax” for the taxable year shall not exceed the
11 amount of tax that would be imposed on the taxpayer’s business
12 income attributed to a LAMBRA determined as if that attributed
13 income represented all of the net income of the taxpayer subject
14 to tax under this part.

15 (2) Attributable income shall be that portion of the taxpayer’s
16 California source business income that is apportioned to the
17 LAMBRA. For that purpose, the taxpayer’s business income that
18 is attributable to sources in this state first shall be determined in
19 accordance with Chapter 17 (commencing with Section 25101) of
20 Part 11. That business income shall be further apportioned to the
21 LAMBRA in accordance with Article 2 (commencing with Section
22 25120) of Chapter 17 of Part 11, modified for purposes of this
23 section in accordance with paragraph (3).

24 (3) Income shall be apportioned to a LAMBRA by multiplying
25 the total California business income of the taxpayer by a fraction,
26 the numerator of which is the property factor plus the payroll factor,
27 and the denominator of which is two. For purposes of this
28 paragraph:

29 (A) The property factor is a fraction, the numerator of which is
30 the average value of the taxpayer’s real and tangible personal
31 property owned or rented and used in the LAMBRA during the
32 taxable year, and the denominator of which is the average value
33 of all the taxpayer’s real and tangible personal property owned or
34 rented and used in this state during the taxable year.

35 (B) The payroll factor is a fraction, the numerator of which is
36 the total amount paid by the taxpayer in the LAMBRA during the
37 taxable year for compensation, and the denominator of which is
38 the total compensation paid by the taxpayer in this state during the
39 taxable year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the “net tax” for the taxable year, as provided in subdivision ~~(h)~~ (i).

~~(j)~~

(k) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

(l) *For taxable years beginning on or after January 1, 2011, the credit allowed by this section must be claimed on a timely filed original return of the qualified taxpayer.*

SEC. 6. *Section 17053.47 of the Revenue and Taxation Code is amended to read:*

17053.47. (a) (1) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the “net tax” ~~(as tax,”~~ as defined in Section ~~17039)~~ 17039, to a qualified taxpayer for hiring a qualified disadvantaged individual during the taxable year for employment in the manufacturing enhancement area. ~~The~~ *For qualified disadvantaged individuals who first commenced employment in taxable years beginning on or after January 1, 1998, and before January 1, 2011, the credit shall be equal to the sum of each of the following:*

~~(1)~~

(A) Fifty percent of the qualified wages in the first year of employment.

~~(2)~~

(B) Forty percent of the qualified wages in the second year of employment.

~~(3)~~

(C) Thirty percent of the qualified wages in the third year of employment.

~~(4)~~

(D) Twenty percent of the qualified wages in the fourth year of employment.

~~(5)~~

(E) Ten percent of the qualified wages in the fifth year of employment.

(2) *For qualified disadvantaged individuals who first commence employment in taxable years beginning on or after January 1,*

1 2011, the credit shall be equal to five thousand dollars (\$5,000)
2 for each net increase in qualified employees, as specified in
3 subdivision (c), employed during the taxable year by a qualified
4 taxpayer.

5 (b) For purposes of this section:

6 (1) ~~“Qualified”~~ For taxable years beginning on or after January
7 1, 1998, and before January 1, 2011, “qualified wages” means:

8 (A) That portion of wages paid or incurred by the qualified
9 taxpayer during the taxable year to qualified disadvantaged
10 individuals that does not exceed 150 percent of the minimum wage.

11 (B) The total amount of qualified wages which may be taken
12 into account for purposes of claiming the credit allowed under this
13 section shall not exceed two million dollars (\$2,000,000) per
14 taxable year.

15 (C) Wages received during the 60-month period beginning with
16 the first day the qualified disadvantaged individual commences
17 employment with the qualified taxpayer. Reemployment in
18 connection with any increase, including a regularly occurring
19 seasonal increase, in the trade or business operations of the taxpayer
20 does not constitute commencement of employment for purposes
21 of this section.

22 (D) Qualified wages do not include any wages paid or incurred
23 by the qualified taxpayer on or after the manufacturing
24 enhancement area expiration date. However, wages paid or incurred
25 with respect to qualified employees who are employed by the
26 qualified taxpayer within the manufacturing enhancement area
27 within the 60-month period prior to the manufacturing enhancement
28 area expiration date shall continue to qualify for the credit under
29 this section after the manufacturing enhancement area expiration
30 date, in accordance with all provisions of this section applied as
31 if the manufacturing enhancement area designation were still in
32 existence and binding.

33 (2) “Acquired” includes any gift, inheritance, transfer incident
34 to divorce, or any other transfer, whether or not for consideration.

35 ~~(2)~~

36 (3) “Minimum wage” means the wage established by the
37 Industrial Welfare Commission as provided for in Chapter 1
38 (commencing with Section 1171) of Part 4 of Division 2 of the
39 Labor Code.

40 ~~(3)~~

1 (4) “Manufacturing enhancement area” means an area designated
2 pursuant to Section 7073.8 of the Government Code according to
3 the procedures of Chapter 12.8 (commencing with Section 7070)
4 of Division 7 of Title 1 of the Government Code.

5 ~~(4)~~

6 (5) “Manufacturing enhancement area expiration date” means
7 the date the manufacturing enhancement area designation expires,
8 is no longer binding, or becomes inoperative.

9 ~~(5)~~

10 (6) “Qualified disadvantaged individual” means an individual
11 who satisfies all of the following requirements:

12 (A) (i) At least 90 percent of whose services for the qualified
13 taxpayer during the taxable year are directly related to the conduct
14 of the qualified taxpayer’s trade or business located in a
15 manufacturing enhancement area.

16 (ii) Who performs at least 50 percent of his or her services for
17 the qualified taxpayer during the taxable year in the manufacturing
18 enhancement area.

19 ~~(B)~~

20 (iii) Who is hired by the qualified taxpayer after the designation
21 of the area as a manufacturing enhancement area in which the
22 individual’s services were primarily performed.

23 ~~(C) Who~~

24 (B) *For an individual who first commenced employment with*
25 *the qualified taxpayer in taxable years beginning before January*
26 *1, 1998, or before January 1, 2011, he or she is any of the*
27 *following immediately preceding the individual’s commencement*
28 *of employment with the qualified taxpayer:*

29 (i) An individual who has been determined eligible for services
30 under the federal Job Training Partnership Act (29 U.S.C. Sec.
31 1501 et seq.), or its successor.

32 (ii) Any voluntary or mandatory registrant under the Greater
33 Avenues for Independence Act of 1985, or its successor, as
34 provided pursuant to Article 3.2 (commencing with Section 11320)
35 of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
36 Code.

37 (iii) Any individual who has been certified eligible by the
38 Employment Development Department under the federal Targeted
39 Jobs Tax Credit Program, or its successor, whether or not this
40 program is in effect.

1 (C) *For a qualified disadvantaged individual who first*
2 *commences employment in taxable years beginning on or after*
3 *January 1, 2011, that individual is a “qualified full-time employee”*
4 *if, in addition to any other requirement imposed by this section,*
5 *he or she was either:*

6 (i) *Paid wages by the qualified employer for services of not less*
7 *than an average of 35 hours per week.*

8 (ii) *A salaried employee and was paid compensation during the*
9 *taxable year for full-time employment, within the meaning of*
10 *Section 515 of the Labor Code, by the qualified employer.*

11 ~~(6)~~

12 (7) (A) “Qualified taxpayer” means any taxpayer engaged in a
13 trade or business within a manufacturing enhancement area
14 designated pursuant to Section 7073.8 of the Government Code
15 and who meets all of the following requirements:

16 ~~(A)~~

17 (i) Is engaged in those lines of business described in Codes 0211
18 to 0291, inclusive, Code 0723, or in Codes 2011 to 3999, inclusive,
19 of the Standard Industrial Classification (SIC) Manual published
20 by the United States Office of Management and Budget, 1987
21 edition.

22 ~~(B)~~

23 (ii) At least 50 percent of the qualified taxpayer’s workforce
24 hired after the designation of the manufacturing enhancement area
25 is composed of individuals who, at the time of hire, are residents
26 of the county in which the manufacturing enhancement area is
27 located.

28 ~~(C)~~

29 (iii) Of this percentage of local hires, at least 30 percent shall
30 be qualified disadvantaged individuals.

31 (B) (i) *Notwithstanding subparagraph (A), a “qualified*
32 *taxpayer” shall not include any person or entity described in*
33 *subparagraph (A) that first commences business activity in a*
34 *manufacturing enhancement area during the taxable year and has,*
35 *within 24 months before the taxpayer first commenced business*
36 *activity in the manufacturing enhancement area, had an overall*
37 *reduction in the number of employees employed by the taxpayer*
38 *within the state outside of the manufacturing enhancement area,*
39 *unless that person or entity has made a written offer of employment*
40 *to each of the employees employed at the location within the state*

1 *where employment was reduced for such employees to continue*
2 *their employment with that person or entity within the*
3 *manufacturing enhancement area.*

4 *(ii) In determining whether the taxpayer has first commenced*
5 *doing business in the manufacturing enhancement area during the*
6 *taxable year, the provisions of subdivision (f) of Section 17276.20,*
7 *without application of paragraph (7) of that subdivision, shall*
8 *apply.*

9 *(iii) The written offer referred to in this subparagraph shall be*
10 *made prior to the termination of employment at the location within*
11 *the state that is outside the manufacturing enhancement area.*

12 *(iv) If any employee described in clause (i) does not timely*
13 *receive a written offer, the person or entity shall not be a qualified*
14 *taxpayer for that taxable year, even if other employees do receive*
15 *a written offer.*

16 *(v) A person or entity may be required to provide, upon request*
17 *of the Franchise Tax Board, written certification, under penalty*
18 *of perjury, that the requirements of this subparagraph were met.*

19 *(vi) All employees of the trades or businesses that are treated*
20 *as related under Section 267, 318, or 707 of the Internal Revenue*
21 *Code shall be treated as employed by a single taxpayer.*

22 ~~(7)~~

23 *(8) “Seasonal employment” means employment by a qualified*
24 *taxpayer that has regular and predictable substantial reductions in*
25 *trade or business operations.*

26 *(9) “Annual full-time equivalent” means either of the following:*

27 *(A) In the case of a full-time employee paid hourly wages,*
28 *“annual full-time equivalent” means the total number of hours*
29 *worked for the taxpayer by the employee (not to exceed 2,000*
30 *hours per employee) divided by 2,000.*

31 *(B) In the case of a salaried full-time employee, “annual*
32 *full-time equivalent” means the total number of weeks worked for*
33 *the taxpayer by the employee divided by 52.*

34 *(c) Except as provided in paragraph (2), the net increase in*
35 *qualified full-time employees of a qualified taxpayer shall be*
36 *determined by paragraph (1):*

37 *(1) (A) (i) If the state’s average nonfarm employment, as*
38 *determined by the Franchise Tax Board based upon information*
39 *published by the Employment Development Department as of*
40 *March 15 of each calendar year, has not decreased for the*

1 *calendar years beginning on the third and the second January 1*
2 *immediately preceding the beginning of the current taxable year;*
3 *as compared with the second and first calendar years respectively,*
4 *then the net increase in qualified full-time employees shall be*
5 *determined on an annual full-time equivalent basis based on the*
6 *amount of the increase of qualified full-time equivalent employees*
7 *in excess of the greatest of the number of qualified full-time*
8 *equivalent employees employed by the qualified taxpayer in any*
9 *of the three immediately preceding taxable years, as determined*
10 *under subparagraph (B).*

11 *(ii) The amount determined under clause (i) shall include the*
12 *fractional amount, if any, of the increase for the taxable year.*

13 *(B) The net increase in qualified full-time employees for the*
14 *current taxable year shall be determined by subtracting the amount*
15 *determined under clause (ii) from the amount determined under*
16 *clause (i). If the amount determined under clause (ii) is equal to*
17 *or exceeds the amount determined under clause (i), the amount*
18 *determined under this subparagraph shall be zero.*

19 *(i) (I) The total number of qualified full-time employees*
20 *employed in the current taxable year by the qualified taxpayer and*
21 *by any trade or business acquired by the qualified taxpayer during*
22 *the current taxable year.*

23 *(II) The greatest total number of qualified full-time employees*
24 *employed in any of the three preceding taxable years by the*
25 *qualified taxpayer and by any trade or business acquired by the*
26 *qualified taxpayer during the current taxable year.*

27 *(ii) The increase in the total number of full-time employees*
28 *(determined under the full-time equivalent rules of paragraph (9)*
29 *of subdivision (b)) employed by the qualified taxpayer in this state*
30 *shall be determined by subtracting the amount determined under*
31 *subclause (II) from the amount determined under subclause (I). If*
32 *the amount determined under subclause (II) is equal to or exceeds*
33 *the amount determined under subclause (I), the amount determined*
34 *under this clause shall be zero.*

35 *(I) The total number of full-time employees employed in this*
36 *state in the current taxable year by the qualified taxpayer and by*
37 *any trade or business acquired by the qualified taxpayer during*
38 *the current taxable year.*

39 *(II) The greatest total number of full-time employees of the*
40 *qualified taxpayer employed in this state in any of the three*

1 preceding taxable years by the qualified taxpayer and by any trade
2 or business acquired by the qualified taxpayer during the current
3 taxable year.

4 (2) (A) (i) If there is a decrease in the state's nonfarm
5 employment, as determined by the Franchise Tax Board based
6 upon information published by the Employment Development
7 Department as of March 15 of each calendar year, for the calendar
8 years beginning on the third and the second January 1 immediately
9 preceding the current taxable year, the net increase in qualified
10 full-time employees shall be determined on an annual full-time
11 equivalent basis as the lesser of the amount determined under
12 subparagraph (C) or the amount determined under subparagraph
13 (B).

14 (ii) The amount determined under clause (i) shall include the
15 fractional amount, if any, of the increase for the taxable year.

16 (B) The increase in the total number of qualified full-time
17 employees shall be determined by subtracting the amount
18 determined under clause (ii) from the amount determined under
19 clause (i). If the amount determined under clause (ii) is equal to
20 or exceeds the amount determined under clause (i), the amount
21 determined under this subparagraph shall be zero.

22 (i) The total number of qualified full-time employees employed
23 in the current taxable year by the qualified taxpayer and by any
24 trade or business acquired by the qualified taxpayer during the
25 current taxable year.

26 (ii) The total number of qualified full-time employees employed
27 in the preceding taxable year by the qualified taxpayer and by any
28 trade or business acquired by the qualified taxpayer during the
29 current taxable year.

30 (C) The increase in the total number of full-time employees
31 (determined under the full-time equivalent rules of paragraph (9)
32 of subdivision (b)) employed by the qualified taxpayer in this state
33 shall be determined by subtracting the amount determined under
34 clause (ii) from the amount determined under clause (i). If the
35 amount determined under clause (ii) is equal to or exceeds the
36 amount determined under clause (i), the amount determined under
37 this subparagraph shall be zero.

38 (i) The total number of full-time employees employed in this
39 state in the current taxable year by the qualified taxpayer and by

1 any trade or business acquired by the qualified taxpayer during
2 the current taxable year.

3 (ii) The total number of full-time employees of the qualified
4 taxpayer employed in this state in the preceding taxable year by
5 the qualified taxpayer and by any trade or business acquired by
6 the qualified taxpayer during the current taxable year.

7 (3) For qualified taxpayers who first commence doing business
8 in this state during the taxable year, the number of qualified
9 full-time employees under subparagraph (B) of paragraph (1) and
10 the number of full-time employees under subparagraph (C) of
11 paragraph (2) for the preceding taxable year shall be zero.

12 (4) For purposes of determining the number of full-time
13 employees of the qualified taxpayer who are employed in this state
14 under paragraphs (1) and (2), only those employees who receive
15 wages that are subject to Division 6 (commencing with Section
16 13000) of the Unemployment Insurance Code from the qualified
17 taxpayer comprising more than 50 percent of that employee's total
18 wages received from the qualified taxpayer for the taxable year,
19 shall be included.

20 (5) For purposes of determining the increase in the number of
21 qualified full-time employees of a qualified taxpayer under this
22 section and Sections 17053.34, 17053.46, and 17053.74, the
23 increase shall be determined separately for the targeted tax area,
24 and each enterprise zone, manufacturing enhancement area, or
25 local agency military base recovery area with respect to which a
26 taxpayer is a qualified taxpayer.

27 (6) Any determination of the Franchise Tax Board under this
28 subdivision with respect to whether there is an increase, a
29 decrease, or no change in the state's nonfarm employment for any
30 calendar year shall be final and may not be reviewed in any
31 administrative or judicial proceeding, even if the data published
32 by the Employment Development Department as of March 15 of
33 any calendar year upon which the Franchise Tax Board relied in
34 making its determination is substantially revised and would
35 otherwise change which formula is applicable under this
36 subdivision.

37 ~~(e)~~

38 (d) (1) For purposes of this section, all of the following apply:

1 (A) All employees of trades or businesses that are under
2 common control shall be treated as employed by a single qualified
3 taxpayer.

4 (B) The credit (if any) allowable by this section with respect to
5 each trade or business shall be determined by reference to its
6 proportionate share of the expense of the qualified wages giving
7 rise to the credit and shall be allocated in that manner.

8 (C) Principles that apply in the case of controlled groups of
9 corporations, as specified in subdivision (d) of Section 23622.7,
10 shall apply with respect to determining employment.

11 (2) If a qualified taxpayer acquires the major portion of a trade
12 or business of another employer (hereinafter in this paragraph
13 referred to as the “predecessor”) or the major portion of a separate
14 unit of a trade or business of a predecessor, then, for purposes of
15 applying this section (other than subdivision ~~(d)~~ (e)) for any
16 calendar year ending after that acquisition, the employment
17 relationship between a qualified disadvantaged individual and a
18 qualified taxpayer shall not be treated as terminated if the qualified
19 disadvantaged individual continues to be employed in that trade
20 or business.

21 ~~(d)~~

22 (e) (1) (A) ~~If~~ *For qualified disadvantaged individuals who first*
23 *commenced employment with at qualified taxpayer in taxable years*
24 *beginning on or after January 1, 1998, and before January 1,*
25 *2011, if the employment, other than seasonal employment, of any*
26 *qualified disadvantaged individual, with respect to whom qualified*
27 *wages are taken into account under subdivision (b) is terminated*
28 *by the qualified taxpayer at any time during the first 270 days of*
29 *that employment (whether or not consecutive) or before the close*
30 *of the 270th calendar day after the day in which that qualified*
31 *disadvantaged individual completes 90 days of employment with*
32 *the qualified taxpayer, the tax imposed by this part for the taxable*
33 *year in which that employment is terminated shall be increased by*
34 *an amount equal to the credit allowed under subdivision (a) for*
35 *that taxable year and all prior taxable years attributable to qualified*
36 *wages paid or incurred with respect to that qualified disadvantaged*
37 *individual.*

38 (B) If the seasonal employment of any qualified disadvantaged
39 individual, with respect to whom qualified wages are taken into
40 account under subdivision (a) is not continued by the qualified

1 taxpayer for a period of 270 days of employment during the
2 60-month period beginning with the day the qualified
3 disadvantaged individual commences seasonal employment with
4 the qualified taxpayer, the tax imposed by this part, for the taxable
5 year that includes the 60th month following the month in which
6 the qualified disadvantaged individual commences seasonal
7 employment with the qualified taxpayer, shall be increased by an
8 amount equal to the credit allowed under subdivision (a) for that
9 taxable year and all prior taxable years attributable to qualified
10 wages paid or incurred with respect to that qualified disadvantaged
11 individual.

12 (2) (A) Subparagraph (A) of paragraph (1) does not apply to
13 any of the following:

14 (i) A termination of employment of a qualified disadvantaged
15 individual who voluntarily leaves the employment of the qualified
16 taxpayer.

17 (ii) A termination of employment of a qualified disadvantaged
18 individual who, before the close of the period referred to in
19 subparagraph (A) of paragraph (1), becomes disabled to perform
20 the services of that employment, unless that disability is removed
21 before the close of that period and the taxpayer fails to offer
22 reemployment to that individual.

23 (iii) A termination of employment of a qualified disadvantaged
24 individual, if it is determined that the termination was due to the
25 misconduct (as defined in Sections 1256-30 to 1256-43, inclusive,
26 of Title 22 of the California Code of Regulations) of that individual.

27 (iv) A termination of employment of a qualified disadvantaged
28 individual due to a substantial reduction in the trade or business
29 operations of the qualified taxpayer.

30 (v) A termination of employment of a qualified disadvantaged
31 individual, if that individual is replaced by other qualified
32 disadvantaged individuals so as to create a net increase in both the
33 number of employees and the hours of employment.

34 (B) Subparagraph (B) of paragraph (1) shall not apply to any
35 of the following:

36 (i) A failure to continue the seasonal employment of a qualified
37 disadvantaged individual who voluntarily fails to return to the
38 seasonal employment of the qualified taxpayer.

39 (ii) A failure to continue the seasonal employment of a qualified
40 disadvantaged individual who, before the close of the period

1 referred to in subparagraph (B) of paragraph (1), becomes disabled
2 and unable to perform the services of that seasonal employment,
3 unless that disability is removed before the close of that period
4 and the qualified taxpayer fails to offer seasonal employment to
5 that qualified disadvantaged individual.

6 (iii) A failure to continue the seasonal employment of a qualified
7 disadvantaged individual, if it is determined that the failure to
8 continue the seasonal employment was due to the misconduct (as
9 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
10 the California Code of Regulations) of that qualified disadvantaged
11 individual.

12 (iv) A failure to continue seasonal employment of a qualified
13 disadvantaged individual due to a substantial reduction in the
14 regular seasonal trade or business operations of the qualified
15 taxpayer.

16 (v) A failure to continue the seasonal employment of a qualified
17 disadvantaged individual, if that qualified disadvantaged individual
18 is replaced by other qualified disadvantaged individuals so as to
19 create a net increase in both the number of seasonal employees
20 and the hours of seasonal employment.

21 (C) For purposes of paragraph (1), the employment relationship
22 between the qualified taxpayer and a qualified disadvantaged
23 individual shall not be treated as terminated by reason of a mere
24 change in the form of conducting the trade or business of the
25 qualified taxpayer, if the qualified disadvantaged individual
26 continues to be employed in that trade or business and the qualified
27 taxpayer retains a substantial interest in that trade or business.

28 (3) Any increase in tax under paragraph (1) shall not be treated
29 as tax imposed by this part for purposes of determining the amount
30 of any credit allowable under this part.

31 ~~(e)~~

32 ~~(f)~~ In the case of an estate or trust, both of the following apply:

33 (1) The qualified wages for any taxable year shall be apportioned
34 between the estate or trust and the beneficiaries on the basis of the
35 income of the estate or trust allocable to each.

36 (2) Any beneficiary to whom any qualified wages have been
37 apportioned under paragraph (1) shall be treated (for purposes of
38 this part) as the employer with respect to those wages.

39 ~~(f)~~

1 (g) The credit shall be reduced by the credit allowed under
2 Section 17053.7. The credit shall also be reduced by the federal
3 credit allowed under Section 51 of the Internal Revenue Code.

4 In addition, any deduction otherwise allowed under this part for
5 the wages or salaries paid or incurred by the qualified taxpayer
6 upon which the credit is based shall be reduced by the amount of
7 the credit, prior to any reduction required by subdivision ~~(g)~~ (h)
8 or ~~(h)~~ (i).

9 ~~(g)~~
10 (h) (1) In the case where the credit otherwise allowed under
11 this section exceeds the “net tax” for the taxable year, that portion
12 of the credit that exceeds the “net tax” may be carried over and
13 added to the credit, if any, in succeeding years, until the credit is
14 exhausted. The credit shall be applied first to the earliest taxable
15 years possible.

16 (2) *Notwithstanding paragraph (1), for taxable years beginning*
17 *on or after January 1, 2011:*

18 (A) *In the case of any portion of a credit available for carryover*
19 *and attributable to a taxable year beginning before January 1,*
20 *2006, that portion shall not be carried forward.*

21 (B) *In the case of credits first allowed in taxable years beginning*
22 *on or after January 1, 2006, the carryover period shall be five*
23 *years from the year for which the credit was first allowed.*

24 ~~(h)~~
25 (i) (1) The amount of credit otherwise allowed under this
26 section, including prior year credit carryovers, that may reduce
27 the “net tax” for the taxable year shall not exceed the amount of
28 tax that would be imposed on the qualified taxpayer’s business
29 income attributed to a manufacturing enhancement area determined
30 as if that attributed income represented all of the net income of the
31 qualified taxpayer subject to tax under this part.

32 (2) Attributable income shall be that portion of the taxpayer’s
33 California source business income that is apportioned to the
34 manufacturing enhancement area. For that purpose, the taxpayer’s
35 business income that is attributable to sources in this state first
36 shall be determined in accordance with Chapter 17 (commencing
37 with Section 25101) of Part 11. That business income shall be
38 further apportioned to the manufacturing enhancement area in
39 accordance with Article 2 (commencing with Section 25120) of

Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a manufacturing enhancement area by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the manufacturing enhancement area during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the manufacturing enhancement area during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision ~~(g)~~ (h).

~~(i)~~

(j) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

~~(j) The~~

(k) For qualified disadvantaged individuals who first commenced employment in taxable years beginning on or after January 1, 1998, and before January 1, 2011, the qualified taxpayer shall do both of the following:

(1) Obtain from the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office or social services agency, or the local government administering the manufacturing enhancement area, a certification that provides that a qualified disadvantaged individual meets the eligibility requirements specified in paragraph (5) of subdivision (b). The

1 Employment Development Department may provide preliminary
2 screening and referral to a certifying agency. The Department of
3 Housing and Community Development shall develop regulations
4 governing the issuance of certificates pursuant to subdivision (d)
5 of Section 7086 of the Government Code and shall develop forms
6 for this purpose.

7 *(2) For any qualified disadvantaged individual who first*
8 *commenced employment in taxable years beginning before January*
9 *1, 2011, for which, as of the later of July 1, 2011, or the date the*
10 *qualified disadvantaged individual first commenced employment,*
11 *a certification described in paragraph (1) has not been obtained*
12 *and a request for certification described in paragraph (1) has not*
13 *been previously submitted, then a request for certification*
14 *described in paragraph (1) with respect to that employee shall be*
15 *submitted to the certifying entity no later than the date that is the*
16 *later of 90 days after July 1, 2011, or 30 days after the date the*
17 *qualified disadvantaged individual first commenced employment.*
18 *A credit shall be allowed under this section with respect to a*
19 *qualified disadvantaged individual described in the preceding*
20 *sentence only if a request for certification was timely submitted in*
21 *accordance with this paragraph.*

22 ~~(2)~~

23 (3) Retain a copy of the certification and provide it upon request
24 to the Franchise Tax Board.

25 *(l) For taxable years beginning on or after January 1, 2011,*
26 *the credit allowed by this section must be claimed on a timely filed*
27 *original return of the qualified taxpayer.*

28 SEC. 7. Section 17053.70 of the Revenue and Taxation Code
29 is amended to read:

30 17053.70. (a) There shall be allowed as a credit against the
31 “~~net tax~~” ~~(as tax,~~ as defined in Section ~~17039~~) 17039, for the
32 taxable year an amount equal to the sales or use tax paid or incurred
33 during the taxable year by the taxpayer in connection with the
34 taxpayer’s purchase of qualified property.

35 (b) For purposes of this section:

36 (1) “Taxpayer” means a person or entity engaged in a trade or
37 business within an enterprise zone.

38 (2) “Qualified property” means:

39 (A) Any of the following:

1 (i) Machinery and machinery parts used for fabricating,
2 processing, assembling, and manufacturing.

3 (ii) Machinery and machinery parts used for the production of
4 renewable energy resources.

5 (iii) Machinery and machinery parts used for either of the
6 following:

7 (I) Air pollution control mechanisms.

8 (II) Water pollution control mechanisms.

9 (iv) Data processing and communications equipment, including,
10 but not limited, to computers, computer-automated drafting
11 systems, copy machines, telephone systems, and faxes.

12 (v) Motion picture manufacturing equipment central to
13 production and postproduction, including, but not limited to,
14 cameras, audio recorders, and digital image and sound processing
15 equipment.

16 (B) The total cost of qualified property purchased and placed
17 in service in any taxable year that may be taken into account by
18 any taxpayer for purposes of claiming this credit shall not exceed
19 one million dollars (\$1,000,000).

20 (C) The qualified property is used by the taxpayer exclusively
21 in an enterprise zone.

22 (D) The qualified property is purchased and placed in service
23 before the date the enterprise zone designation expires, is no longer
24 binding, or becomes inoperative.

25 (3) "Enterprise zone" means the area designated as an enterprise
26 zone pursuant to Chapter 12.8 (commencing with Section 7070)
27 of Division 7 of Title 1 of the Government Code.

28 (c) If the taxpayer has purchased property upon which a use tax
29 has been paid or incurred, the credit provided by this section shall
30 be allowed only if qualified property of a comparable quality and
31 price is not timely available for purchase in this state.

32 (d) (1) In the case where the credit otherwise allowed under
33 this section exceeds the "net tax" for the taxable year, that portion
34 of the credit that exceeds the "net tax" may be carried over and
35 added to the credit, if any, in succeeding taxable years, until the
36 credit is exhausted. The credit shall be applied first to the earliest
37 taxable years possible.

38 (2) *Notwithstanding paragraph (1), for taxable years beginning*
39 *on or after January 1, 2011:*

1 (A) *In the case of any portion of a credit available for carryover*
2 *and attributable to a taxable year beginning before January 1,*
3 *2006, that portion shall not be carried forward.*

4 (B) *In the case of credits first allowed in taxable years beginning*
5 *on or after January 1, 2006, the carryover period shall be five*
6 *years from the year for which the credit was first allowed.*

7 (e) Any taxpayer who elects to be subject to this section shall
8 not be entitled to increase the basis of the qualified property as
9 otherwise required by Section 164(a) of the Internal Revenue Code
10 with respect to sales or use tax paid or incurred in connection with
11 the taxpayer's purchase of qualified property.

12 (f) (1) The amount of the credit otherwise allowed under this
13 section and Section 17053.74, including any credit carryover from
14 prior years, that may reduce the "net tax" for the taxable year shall
15 not exceed the amount of tax that would be imposed on the
16 taxpayer's business income attributable to the enterprise zone
17 determined as if that attributable income represented all of the
18 income of the taxpayer subject to tax under this part.

19 (2) Attributable income shall be that portion of the taxpayer's
20 California source business income that is apportioned to the
21 enterprise zone. For that purpose, the taxpayer's business income
22 attributable to sources in this state first shall be determined in
23 accordance with Chapter 17 (commencing with Section 25101) of
24 Part 11. That business income shall be further apportioned to the
25 enterprise zone in accordance with Article 2 (commencing with
26 Section 25120) of Chapter 17 of Part 11, modified for purposes
27 of this section in accordance with paragraph (3).

28 (3) Business income shall be apportioned to the enterprise zone
29 by multiplying the total California business income of the taxpayer
30 by a fraction, the numerator of which is the property factor plus
31 the payroll factor, and the denominator of which is two. For
32 purposes of this paragraph:

33 (A) The property factor is a fraction, the numerator of which is
34 the average value of the taxpayer's real and tangible personal
35 property owned or rented and used in the enterprise zone during
36 the taxable year, and the denominator of which is the average value
37 of all the taxpayer's real and tangible personal property owned or
38 rented and used in this state during the taxable year.

39 (B) The payroll factor is a fraction, the numerator of which is
40 the total amount paid by the taxpayer in the enterprise zone during

1 the taxable year for compensation, and the denominator of which
2 is the total compensation paid by the taxpayer in this state during
3 the taxable year.

4 (4) The portion of any credit remaining, if any, after application
5 of this subdivision, shall be carried over to succeeding taxable
6 years, as if it were an amount exceeding the “net tax” for the
7 taxable year, as provided in subdivision (d).

8 (g) The amendments made to this section by the act adding this
9 subdivision shall apply to taxable years beginning on or after
10 January 1, 1998.

11 (h) *For taxable years beginning on or after January 1, 2011,*
12 *the credit allowed by this section must be claimed on a timely filed*
13 *original return of the taxpayer.*

14 *SEC. 8. Section 17053.74 of the Revenue and Taxation Code*
15 *is amended to read:*

16 17053.74. (a) (1) There shall be allowed a credit against the
17 “net tax” ~~(as tax,”~~ as defined in Section ~~17039)~~ 17039, to a
18 taxpayer who employs a qualified employee in an enterprise zone
19 during the taxable year *who first commenced employment with the*
20 *qualified employee in taxable years beginning before January 1,*
21 *2011.* The credit shall be equal to the sum of each of the following:

22 ~~(1)~~
23 (A) Fifty percent of qualified wages in the first year of
24 employment.

25 ~~(2)~~
26 (B) Forty percent of qualified wages in the second year of
27 employment.

28 ~~(3)~~
29 (C) Thirty percent of qualified wages in the third year of
30 employment.

31 ~~(4)~~
32 (D) Twenty percent of qualified wages in the fourth year of
33 employment.

34 ~~(5)~~
35 (E) Ten percent of qualified wages in the fifth year of
36 employment.

37 (2) *There shall be allowed a credit against the “net tax,” as*
38 *defined in Section 17039, to a taxpayer who employs a qualified*
39 *employee in an enterprise zone during the taxable year who first*
40 *commenced employment with the qualified taxpayer in taxable*

1 years beginning on or after January 1, 2011. The credit shall be
2 equal to five thousand dollars (\$5,000) for each net increase in
3 qualified full-time employees, as specified in subdivision (c),
4 employed during the taxable year by a qualified taxpayer.

5 (b) For purposes of this section:

6 (1) ~~“Qualified”~~ For taxable years beginning before January 1,
7 2011, “qualified wages” means:

8 (A) (i) Except as provided in clause (ii), that portion of wages
9 paid or incurred by the taxpayer during the taxable year to qualified
10 employees that does not exceed 150 percent of the minimum wage.

11 (ii) For up to 1,350 qualified employees who are employed by
12 the taxpayer in the Long Beach Enterprise Zone in aircraft
13 manufacturing activities described in Codes 3721 to 3728,
14 inclusive, and Code 3812 of the Standard Industrial Classification
15 (SIC) Manual published by the United States Office of
16 Management and Budget, 1987 edition, “qualified wages” means
17 that portion of hourly wages that does not exceed 202 percent of
18 the minimum wage.

19 (B) Wages received during the 60-month period beginning with
20 the first day the employee commences employment with the
21 taxpayer. Reemployment in connection with any increase, including
22 a regularly occurring seasonal increase, in the trade or business
23 operations of the taxpayer does not constitute commencement of
24 employment for purposes of this section.

25 (C) Qualified wages do not include any wages paid or incurred
26 by the taxpayer on or after the zone expiration date. However,
27 wages paid or incurred with respect to qualified employees who
28 are employed by the taxpayer within the enterprise zone within
29 the 60-month period prior to the zone expiration date shall continue
30 to qualify for the credit under this section after the zone expiration
31 date, in accordance with all provisions of this section applied as
32 if the enterprise zone designation were still in existence and
33 binding.

34 (2) “Acquired” includes any gift, inheritance, transfer incident
35 to divorce, or any other transfer, whether or not for consideration.

36 ~~(2)~~

37 (3) “Minimum wage” means the wage established by the
38 Industrial Welfare Commission as provided for in Chapter 1
39 (commencing with Section 1171) of Part 4 of Division 2 of the
40 Labor Code.

1 ~~(3)~~

2 (4) “Zone expiration date” means the date the enterprise zone
3 designation expires, is no longer binding, or becomes inoperative.

4 ~~(4)~~

5 (5) (A) “Qualified employee” means an individual who meets
6 all of the following requirements:

7 (i) At least 90 percent of whose services for the taxpayer during
8 the taxable year are directly related to the conduct of the taxpayer’s
9 trade or business located in an enterprise zone.

10 (ii) Performs at least 50 percent of his or her services for the
11 taxpayer during the taxable year in an enterprise zone.

12 (iii) Is hired by the taxpayer after the date of original designation
13 of the area in which services were performed as an enterprise zone.

14 (iv) ~~Is~~ *For an individual who first commenced employment with*
15 *the taxpayer in taxable years beginning before January 1, 2011,*
16 *he or she is any of the following:*

17 (I) Immediately preceding the qualified employee’s
18 commencement of employment with the taxpayer, was a person
19 eligible for services under the federal Job Training Partnership
20 Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving,
21 or is eligible to receive, subsidized employment, training, or
22 services funded by the federal Job Training Partnership Act, or its
23 successor.

24 (II) Immediately preceding the qualified employee’s
25 commencement of employment with the taxpayer, was a person
26 eligible to be a voluntary or mandatory registrant under the Greater
27 Avenues for Independence Act of 1985 (GAIN) provided for
28 pursuant to Article 3.2 (commencing with Section 11320) of
29 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
30 Code, or its successor.

31 (III) Immediately preceding the qualified employee’s
32 commencement of employment with the taxpayer, was an
33 economically disadvantaged individual 14 years of age or older.

34 (IV) Immediately preceding the qualified employee’s
35 commencement of employment with the taxpayer, was a dislocated
36 worker who meets any of the following:

37 ~~(aa)~~

38 ~~(ia)~~ Has been terminated or laid off or who has received a notice
39 of termination or layoff from employment, is eligible for or has

1 exhausted entitlement to unemployment insurance benefits, and
2 is unlikely to return to his or her previous industry or occupation.

3 ~~(bb)~~

4 *(ib)* Has been terminated or has received a notice of termination
5 of employment as a result of any permanent closure or any
6 substantial layoff at a plant, facility, or enterprise, including an
7 individual who has not received written notification but whose
8 employer has made a public announcement of the closure or layoff.

9 ~~(ee)~~

10 *(ic)* Is long-term unemployed and has limited opportunities for
11 employment or reemployment in the same or a similar occupation
12 in the area in which the individual resides, including an individual
13 55 years of age or older who may have substantial barriers to
14 employment by reason of age.

15 ~~(dd)~~

16 *(id)* Was self-employed (including farmers and ranchers) and
17 is unemployed as a result of general economic conditions in the
18 community in which he or she resides or because of natural
19 disasters.

20 ~~(ee)~~

21 *(ie)* Was a civilian employee of the Department of Defense
22 employed at a military installation being closed or realigned under
23 the Defense Base Closure and Realignment Act of 1990.

24 ~~(ff)~~

25 *(if)* Was an active member of the armed forces or National Guard
26 as of September 30, 1990, and was either involuntarily separated
27 or separated pursuant to a special benefits program.

28 ~~(gg)~~

29 *(ig)* Is a seasonal or migrant worker who experiences chronic
30 seasonal unemployment and underemployment in the agriculture
31 industry, aggravated by continual advancements in technology and
32 mechanization.

33 ~~(hh)~~

34 *(ih)* Has been terminated or laid off, or has received a notice of
35 termination or layoff, as a consequence of compliance with the
36 Clean Air Act.

37 (V) Immediately preceding the qualified employee's
38 commencement of employment with the taxpayer, was a disabled
39 individual who is eligible for or enrolled in, or has completed a
40 state rehabilitation plan or is a service-connected disabled veteran,

1 veteran of the Vietnam era, or veteran who is recently separated
2 from military service.

3 (VI) Immediately preceding the qualified employee's
4 commencement of employment with the taxpayer, was an
5 ex-offender. An individual shall be treated as convicted if he or
6 she was placed on probation by a state court without a finding of
7 guilt.

8 (VII) Immediately preceding the qualified employee's
9 commencement of employment with the taxpayer, was a person
10 eligible for or a recipient of any of the following:

11 ~~(aa)~~

12 ~~(ia)~~ Federal Supplemental Security Income benefits.

13 ~~(bb)~~

14 ~~(ib)~~ Aid to Families with Dependent Children.

15 ~~(ee)~~

16 ~~(ic)~~ Food stamps.

17 ~~(dd)~~

18 ~~(id)~~ State and local general assistance.

19 (VIII) Immediately preceding the qualified employee's
20 commencement of employment with the taxpayer, was a member
21 of a federally recognized Indian tribe, band, or other group of
22 Native American descent.

23 (IX) Immediately preceding the qualified employee's
24 commencement of employment with the taxpayer, was a resident
25 of a targeted employment area, as defined in Section 7072 of the
26 Government Code.

27 (X) An employee who qualified the taxpayer for the enterprise
28 zone hiring credit under former Section 17053.8 or the program
29 area hiring credit under former Section 17053.11.

30 (XI) Immediately preceding the qualified employee's
31 commencement of employment with the taxpayer, was a member
32 of a targeted group, as defined in Section 51(d) of the Internal
33 Revenue Code, or its successor.

34 (B) Priority for employment shall be provided to an individual
35 who is enrolled in a qualified program under the federal Job
36 Training Partnership Act or the Greater Avenues for Independence
37 Act of 1985 or who is eligible as a member of a targeted group
38 under the Work Opportunity Tax Credit (Section 51 of the Internal
39 Revenue Code), or its successor.

1 (v) *For a qualified employee who first commence employment*
2 *with a taxpayer in taxable years beginning on or after January 1,*
3 *2011, that individual is a “qualified full-time employee” if, in*
4 *addition to other requirement imposed by this section, he or she*
5 *was either:*

6 (I) *Paid wages by the qualified employer for services of not less*
7 *than an average of 35 hours per week.*

8 (II) *A salaried employee and was paid compensation during the*
9 *taxable year for full-time employment, within the meaning of*
10 *Section 515 of the Labor Code, by the qualified employer.*

11 ~~(5)~~

12 (6) (A) *“Taxpayer” means a person or entity engaged in a trade*
13 *or business within an enterprise zone designated pursuant to*
14 *Chapter 12.8 (commencing with Section 7070) of the Government*
15 *Code.*

16 (B) (i) *Notwithstanding subparagraph (A), a “taxpayer” shall*
17 *not include any person or entity described in subparagraph (A)*
18 *that first commences business activity in an enterprise zone during*
19 *the taxable year and has, within 24 months before the taxpayer*
20 *first commenced business activity in the enterprise zone, had an*
21 *overall reduction in the number of employees employed by the*
22 *taxpayer within the state outside of the enterprise zone, unless that*
23 *person or entity has made a written offer of employment to each*
24 *of the employees employed at the location within the state where*
25 *employment was reduced for such employees to continue their*
26 *employment with that person or entity within the enterprise zone.*

27 (ii) *In determining whether the taxpayer has first commenced*
28 *doing business in the enterprise zone during the taxable year, the*
29 *provisions of subdivision (f) of Section 17276.20, without*
30 *application of paragraph (7) of that subdivision, shall apply.*

31 (iii) *The written offer referred to in this subparagraph shall be*
32 *made prior to the termination of employment at the location within*
33 *the state that is outside the enterprise zone.*

34 (iv) *If any employee described in clause (i) does not timely*
35 *receive a written offer, the person or entity shall not be a qualified*
36 *taxpayer for that taxable year, even if other employees do receive*
37 *a written offer.*

38 (v) *A person or entity shall be required to provide, upon request*
39 *of the Franchise Tax Board, written certification, under penalty*
40 *of perjury, that the requirements of this subparagraph were met.*

1 (vi) *All employees of the trades or businesses that are treated*
2 *as related under Section 267, 318, and 707 of the Internal Revenue*
3 *Code shall be treated or employed by a single taxpayer.*

4 ~~(6)~~

5 (7) *“Seasonal employment” means employment by a taxpayer*
6 *that has regular and predictable substantial reductions in trade or*
7 *business operations.*

8 (8) *“Annual full-time equivalent” means either of the following:*

9 (A) *In the case of a full-time employee paid hourly wages,*
10 *“annual full-time equivalent” means the total number of hours*
11 *worked for the taxpayer by the employee (not to exceed 2,000*
12 *hours per employee) divided by 2,000.*

13 (B) *In the case of a salaried full-time employee, “annual*
14 *full-time equivalent” means the total number of weeks worked for*
15 *the taxpayer by the employee divided by 52.*

16 (c) *Except as provided in paragraph (2), the net increase in*
17 *qualified full-time employees of a qualified taxpayer shall be*
18 *determined by paragraph (1):*

19 (1) (A) (i) *If the state’s average nonfarm employment, as*
20 *determined by the Franchise Tax Board based upon information*
21 *published by the Employment Development Department as of*
22 *March 15 of each calendar year, has not decreased for the*
23 *calendar years beginning on the third and the second January 1*
24 *immediately preceding the beginning of the current taxable year,*
25 *as compared with the second and the first calendar years*
26 *respectively, then the net increase in qualified full-time employees*
27 *shall be determined on an annual full-time equivalent basis based*
28 *on the amount of the increase of qualified full-time equivalent*
29 *employees in excess of the greatest of the number of qualified*
30 *full-time equivalent employees employed by the qualified taxpayer*
31 *in any of the three immediately preceding taxable years, as*
32 *determined under subparagraph (B).*

33 (ii) *The amount determined under clause (i) shall include the*
34 *fractional amount, if any, of the increase for the taxable year.*

35 (B) *The net increase in qualified full-time employees for the*
36 *current taxable year shall be determined by subtracting the amount*
37 *determined under clause (ii) from the amount determined under*
38 *clause (i). If the amount determined under clause (ii) is equal to*
39 *or exceeds the amount determined under clause (i), the amount*
40 *determined under this subparagraph shall be zero.*

1 (i) (I) *The total number of qualified full-time employees*
2 *employed in the current taxable year by the qualified taxpayer and*
3 *by any trade or business acquired by the qualified taxpayer during*
4 *the current taxable year.*

5 (II) *The greatest total number of qualified full-time employees*
6 *employed in any of the three preceding taxable years by the*
7 *qualified taxpayer and by any trade or business acquired by the*
8 *qualified taxpayer during the current taxable year.*

9 (ii) *The increase in the total number of full-time employees*
10 *(determined under the full-time equivalent rules of paragraph (8)*
11 *of subdivision (b)) employed by the qualified taxpayer in this state*
12 *shall be determined by subtracting the amount determined under*
13 *subclause (II) from the amount determined under subclause (I). If*
14 *the amount determined under subclause (II) is equal to or exceeds*
15 *the amount determined under subclause (I), the amount determined*
16 *under this clause shall be zero.*

17 (I) *The total number of full-time employees employed in this*
18 *state in the current taxable year by the qualified taxpayer and by*
19 *any trade or business acquired by the qualified taxpayer during*
20 *the current taxable year.*

21 (II) *The greatest total number of full-time employees of the*
22 *qualified taxpayer employed in this state in any of the three*
23 *preceding taxable years by the qualified taxpayer and by any trade*
24 *or business acquired by the qualified taxpayer during the current*
25 *taxable year.*

26 (2) (A) (i) *If there is a decrease in the state's nonfarm*
27 *employment, as determined by the Franchise Tax Board based*
28 *upon information published by the Employment Development*
29 *Department as of March 15 of each calendar year, for the calendar*
30 *years beginning on the third and the second January 1 immediately*
31 *preceding the current taxable year, the net increase in qualified*
32 *full-time employees shall be determined on an annual full-time*
33 *equivalent basis as the lesser of the amount determined under*
34 *subparagraph (C) or the amount determined under subparagraph*
35 *(B).*

36 (ii) *The amount determined under clause (i) shall include the*
37 *fractional amount, if any, of the increase for the taxable year.*

38 (B) *The increase in the total number of qualified full-time*
39 *employees shall be determined by subtracting the amount*
40 *determined under clause (ii) from the amount determined under*

1 *clause (i). If the amount determined under clause (ii) is equal to*
2 *or exceeds the amount determined under clause (i), the amount*
3 *determined under this subparagraph shall be zero.*

4 *(i) The total number of qualified full-time employees employed*
5 *in the current taxable year by the qualified taxpayer and by any*
6 *trade or business acquired by the qualified taxpayer during the*
7 *current taxable year.*

8 *(ii) The total number of qualified full-time employees employed*
9 *in the preceding taxable year by the qualified taxpayer and by any*
10 *trade or business acquired by the qualified taxpayer during the*
11 *current taxable year.*

12 *(C) The increase in the total number of full-time employees*
13 *(determined under the full-time equivalent rules of paragraph (8)*
14 *of subdivision (b)) employed by the qualified taxpayer in this state*
15 *shall be determined by subtracting the amount determined under*
16 *clause (ii) from the amount determined under clause (i). If the*
17 *amount determined under clause (ii) is equal to or exceeds the*
18 *amount determined under clause (i), the amount determined under*
19 *this subparagraph shall be zero.*

20 *(i) The total number of full-time employees employed in this*
21 *state in the current taxable year by the qualified taxpayer and by*
22 *any trade or business acquired by the qualified taxpayer during*
23 *the current taxable year.*

24 *(ii) The total number of full-time employees of the qualified*
25 *taxpayer employed in this state in the preceding taxable year by*
26 *the qualified taxpayer and by any trade or business acquired by*
27 *the qualified taxpayer during the current taxable year.*

28 *(3) For qualified taxpayers who first commence doing business*
29 *in this state during the taxable year, the number of qualified*
30 *full-time employees under subparagraph (B) of paragraph (1) and*
31 *the number of full-time employees under subparagraph (C) of*
32 *paragraph (2) for the preceding taxable year shall be zero.*

33 *(4) For purposes of determining the number of full-time*
34 *employees of the qualified taxpayer who are employed in this state*
35 *under paragraphs (1) and (2), only those employees who receive*
36 *wages that are subject to Division 6 (commencing with Section*
37 *13000) of the Unemployment Insurance Code from the qualified*
38 *taxpayer comprising more than 50 percent of that employee's total*
39 *wages received from the qualified taxpayer for the taxable year,*
40 *shall be included.*

1 (5) *For purposes of determining the increase in the number of*
2 *qualified full-time employees of a qualified taxpayer under this*
3 *section and Sections 17053.34, 17053.46, and 17053.47, the*
4 *increase shall be determined separately for the targeted tax area,*
5 *and each enterprise zone, manufacturing enhancement area, or*
6 *local agency military base recovery area with respect to which a*
7 *taxpayer is a qualified taxpayer.*

8 (6) *Any determination of the Franchise Tax Board under this*
9 *subdivision with respect to whether there is an increase, a*
10 *decrease, or no change in the state's nonfarm employment for any*
11 *calendar year shall be final and may not be reviewed in any*
12 *administrative or judicial proceeding, even if the data published*
13 *by the Employment Development Department as of March 15 of*
14 *any calendar year upon which the Franchise Tax Board relied in*
15 *making its determination is substantially revised and would*
16 *otherwise change which formula is applicable under this*
17 *subdivision.*

18 ~~(e) The~~

19 (d) *For qualified employees who first commenced employment*
20 *with the taxpayer in taxable years beginning before January 1,*
21 *2011, the taxpayer shall do both of the following:*

22 (1) Obtain from the Employment Development Department, as
23 permitted by federal law, the local county or city Job Training
24 Partnership Act administrative entity, the local county GAIN office
25 or social services agency, or the local government administering
26 the enterprise zone, a certification which provides that a qualified
27 employee meets the eligibility requirements specified in clause
28 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
29 Employment Development Department may provide preliminary
30 screening and referral to a certifying agency. The Employment
31 Development Department shall develop a form for this purpose.
32 The Department of Housing and Community Development shall
33 develop regulations governing the issuance of certificates by local
34 governments pursuant to subdivision (a) of Section 7086 of the
35 Government Code.

36 (2) *For any qualified employee who first commenced*
37 *employment in taxable years beginning before January 1, 2011,*
38 *for which, as of the later of July 1, 2011, or the date the qualified*
39 *employee first commenced employment, a certification described*
40 *in paragraph (1) has not been obtained and a request for*

1 *certification described in paragraph (1) has not been previously*
2 *submitted, then a request for certification described in paragraph*
3 *(1) with respect to that employee shall be submitted to the certifying*
4 *entity no later than the date that is the later of 90 days after July*
5 *1, 2011, or 30 days after the date the qualified employee first*
6 *commenced employment. A credit shall be allowed under this*
7 *section with respect to a qualified employee described in the*
8 *preceding sentence only if a request for certification was timely*
9 *submitted in accordance with this paragraph.*

10 ~~(2)~~

11 (3) Retain a copy of the certification and provide it upon request
12 to the Franchise Tax Board.

13 ~~(d)~~

14 (e) (1) For purposes of this section:

15 (A) All employees of trades or businesses, which are not
16 incorporated, that are under common control shall be treated as
17 employed by a single taxpayer.

18 (B) The credit, if any, allowable by this section with respect to
19 each trade or business shall be determined by reference to its
20 proportionate share of the expense of the qualified wages giving
21 rise to the credit, and shall be allocated in that manner.

22 (C) Principles that apply in the case of controlled groups of
23 corporations, as specified in subdivision (d) of Section 23622.7,
24 shall apply with respect to determining employment.

25 (2) If an employer acquires the major portion of a trade or
26 business of another employer (hereinafter in this paragraph referred
27 to as the “predecessor”) or the major portion of a separate unit of
28 a trade or business of a predecessor, then, for purposes of applying
29 this section (other than subdivision ~~(e)~~ (f)) for any calendar year
30 ending after that acquisition, the employment relationship between
31 a qualified employee and an employer shall not be treated as
32 terminated if the employee continues to be employed in that trade
33 or business.

34 ~~(e)~~

35 (f) (1) (A) ~~If~~ *For qualified employees who first commenced*
36 *employment with the qualified taxpayer in taxable years beginning*
37 *before January 1, 2011, if the employment, other than seasonal*
38 *employment, of any qualified employee, with respect to whom*
39 *qualified wages are taken into account under subdivision (a) is*
40 *terminated by the taxpayer at any time during the first 270 days*

1 of that employment (whether or not consecutive) or before the
2 close of the 270th calendar day after the day in which that
3 employee completes 90 days of employment with the taxpayer,
4 the tax imposed by this part for the taxable year in which that
5 employment is terminated shall be increased by an amount equal
6 to the credit allowed under subdivision (a) for that taxable year
7 and all prior taxable years attributable to qualified wages paid or
8 incurred with respect to that employee.

9 (B) If the seasonal employment of any qualified employee, with
10 respect to whom qualified wages are taken into account under
11 subdivision (a) is not continued by the taxpayer for a period of
12 270 days of employment during the 60-month period beginning
13 with the day the qualified employee commences seasonal
14 employment with the taxpayer, the tax imposed by this part, for
15 the taxable year that includes the 60th month following the month
16 in which the qualified employee commences seasonal employment
17 with the taxpayer, shall be increased by an amount equal to the
18 credit allowed under subdivision (a) for that taxable year and all
19 prior taxable years attributable to qualified wages paid or incurred
20 with respect to that qualified employee.

21 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
22 any of the following:

23 (i) A termination of employment of a qualified employee who
24 voluntarily leaves the employment of the taxpayer.

25 (ii) A termination of employment of a qualified employee who,
26 before the close of the period referred to in paragraph (1), becomes
27 disabled and unable to perform the services of that employment,
28 unless that disability is removed before the close of that period
29 and the taxpayer fails to offer reemployment to that employee.

30 (iii) A termination of employment of a qualified employee, if
31 it is determined that the termination was due to the misconduct (as
32 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
33 the California Code of Regulations) of that employee.

34 (iv) A termination of employment of a qualified employee due
35 to a substantial reduction in the trade or business operations of the
36 taxpayer.

37 (v) A termination of employment of a qualified employee, if
38 that employee is replaced by other qualified employees so as to
39 create a net increase in both the number of employees and the
40 hours of employment.

1 (B) Subparagraph (B) of paragraph (1) shall not apply to any
2 of the following:

3 (i) A failure to continue the seasonal employment of a qualified
4 employee who voluntarily fails to return to the seasonal
5 employment of the taxpayer.

6 (ii) A failure to continue the seasonal employment of a qualified
7 employee who, before the close of the period referred to in
8 subparagraph (B) of paragraph (1), becomes disabled and unable
9 to perform the services of that seasonal employment, unless that
10 disability is removed before the close of that period and the
11 taxpayer fails to offer seasonal employment to that qualified
12 employee.

13 (iii) A failure to continue the seasonal employment of a qualified
14 employee, if it is determined that the failure to continue the
15 seasonal employment was due to the misconduct (as defined in
16 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
17 Code of Regulations) of that qualified employee.

18 (iv) A failure to continue seasonal employment of a qualified
19 employee due to a substantial reduction in the regular seasonal
20 trade or business operations of the taxpayer.

21 (v) A failure to continue the seasonal employment of a qualified
22 employee, if that qualified employee is replaced by other qualified
23 employees so as to create a net increase in both the number of
24 seasonal employees and the hours of seasonal employment.

25 (C) For purposes of paragraph (1), the employment relationship
26 between the taxpayer and a qualified employee shall not be treated
27 as terminated by reason of a mere change in the form of conducting
28 the trade or business of the taxpayer, if the qualified employee
29 continues to be employed in that trade or business and the taxpayer
30 retains a substantial interest in that trade or business.

31 (3) Any increase in tax under paragraph (1) shall not be treated
32 as tax imposed by this part for purposes of determining the amount
33 of any credit allowable under this part.

34 (f)

35 (g) In the case of an estate or trust, both of the following apply:

36 (1) The qualified wages for any taxable year shall be apportioned
37 between the estate or trust and the beneficiaries on the basis of the
38 income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

~~(g)~~

(h) For purposes of this section, “enterprise zone” means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

~~(h)~~

(i) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision ~~(i)~~ (j) or ~~(j)~~ (k).

~~(i)~~

(j) (1) In the case where the credit otherwise allowed under this section exceeds the “net tax” for the taxable year, that portion of the credit that exceeds the “net tax” may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(2) *Notwithstanding paragraph (1), for taxable years beginning on or after January 1, 2011:*

(A) *In the case of any portion of a credit available for carryover and attributable to a taxable year beginning before January 1, 2006, that portion shall not be carried forward.*

(B) *In the case of credits first allowed in taxable years beginning on or after January 1, 2006, the carryover period shall be five years from the year for which the credit was first allowed.*

~~(j)~~

(k) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the “net tax” for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer’s business income attributable to the enterprise zone

1 determined as if that attributable income represented all of the
2 income of the taxpayer subject to tax under this part.

3 (2) Attributable income shall be that portion of the taxpayer's
4 California source business income that is apportioned to the
5 enterprise zone. For that purpose, the taxpayer's business income
6 attributable to sources in this state first shall be determined in
7 accordance with Chapter 17 (commencing with Section 25101) of
8 Part 11. That business income shall be further apportioned to the
9 enterprise zone in accordance with Article 2 (commencing with
10 Section 25120) of Chapter 17 of Part 11, modified for purposes
11 of this section in accordance with paragraph (3).

12 (3) Business income shall be apportioned to the enterprise zone
13 by multiplying the total California business income of the taxpayer
14 by a fraction, the numerator of which is the property factor plus
15 the payroll factor, and the denominator of which is two. For
16 purposes of this paragraph:

17 (A) The property factor is a fraction, the numerator of which is
18 the average value of the taxpayer's real and tangible personal
19 property owned or rented and used in the enterprise zone during
20 the taxable year, and the denominator of which is the average value
21 of all the taxpayer's real and tangible personal property owned or
22 rented and used in this state during the taxable year.

23 (B) The payroll factor is a fraction, the numerator of which is
24 the total amount paid by the taxpayer in the enterprise zone during
25 the taxable year for compensation, and the denominator of which
26 is the total compensation paid by the taxpayer in this state during
27 the taxable year.

28 (4) The portion of any credit remaining, if any, after application
29 of this subdivision, shall be carried over to succeeding taxable
30 years, as if it were an amount exceeding the "net tax" for the
31 taxable year, as provided in subdivision-~~(i)~~ (j).

32 ~~(k)~~

33 (l) The changes made to this section by the act adding this
34 subdivision shall apply to taxable years beginning on or after
35 January 1, 1997.

36 (m) *For taxable years beginning on or after January 1, 2011,*
37 *the credit allowed by this section must be claimed on a timely filed*
38 *original return of the taxpayer.*

1 *SEC. 9. Section 17053.80 of the Revenue and Taxation Code,*
2 *as added by Section 3 of Chapter 10 of the Third Extraordinary*
3 *Session of the Statutes of 2009, is repealed.*

4 ~~17053.80. (a) For each taxable year beginning on or after~~
5 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
6 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
7 ~~for each net increase in qualified full-time employees, as specified~~
8 ~~in subdivision (c), hired during the taxable year by a qualified~~
9 ~~employer.~~

10 ~~(b) For purposes of this section:~~

11 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
12 ~~to divorce, or any other transfer, whether or not for consideration.~~

13 ~~(2) “Qualified full-time employee” means:~~

14 ~~(A) A qualified employee who was paid qualified wages by the~~
15 ~~qualified employer for services of not less than an average of 35~~
16 ~~hours per week.~~

17 ~~(B) A qualified employee who was a salaried employee and~~
18 ~~was paid compensation during the taxable year for full-time~~
19 ~~employment, within the meaning of Section 515 of the Labor Code,~~
20 ~~by the qualified employer.~~

21 ~~(3) A “qualified employee” shall not include any of the~~
22 ~~following:~~

23 ~~(A) An employee certified as a qualified employee in an~~
24 ~~enterprise zone designated in accordance with Chapter 12.8~~
25 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
26 ~~Government Code.~~

27 ~~(B) An employee certified as a qualified disadvantaged~~
28 ~~individual in a manufacturing enhancement area designated in~~
29 ~~accordance with Section 7073.8 of the Government Code.~~

30 ~~(C) An employee certified as a qualified employee in a targeted~~
31 ~~tax area designated in accordance with Section 7097 of the~~
32 ~~Government Code.~~

33 ~~(D) An employee certified as a qualified disadvantaged~~
34 ~~individual or a qualified displaced employee in a local agency~~
35 ~~military base recovery area (LAMBRA) designated in accordance~~
36 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
37 ~~7 of Title 1 of the Government Code.~~

38 ~~(E) An employee whose wages are included in calculating any~~
39 ~~other credit allowed under this part.~~

1 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
2 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
3 ~~employees.~~

4 ~~(5) “Qualified wages” means wages subject to Division 6~~
5 ~~(commencing with Section 13000) of the Unemployment Insurance~~
6 ~~Code.~~

7 ~~(6) “Annual full-time equivalent” means either of the following:~~

8 ~~(A) In the case of a full-time employee paid hourly qualified~~
9 ~~wages, “annual full-time equivalent” means the total number of~~
10 ~~hours worked for the taxpayer by the employee (not to exceed~~
11 ~~2,000 hours per employee) divided by 2,000.~~

12 ~~(B) In the case of a salaried full-time employee, “annual~~
13 ~~full-time equivalent” means the total number of weeks worked for~~
14 ~~the taxpayer by the employee divided by 52.~~

15 ~~(e) The net increase in qualified full-time employees of a~~
16 ~~qualified employer shall be determined as provided by this~~
17 ~~subdivision:~~

18 ~~(1) (A) The net increase in qualified full-time employees shall~~
19 ~~be determined on an annual full-time equivalent basis by~~
20 ~~subtracting from the amount determined in subparagraph (C) the~~
21 ~~amount determined in subparagraph (B):~~

22 ~~(B) The total number of qualified full-time employees employed~~
23 ~~in the preceding taxable year by the taxpayer and by any trade or~~
24 ~~business acquired by the taxpayer during the current taxable year.~~

25 ~~(C) The total number of full-time employees employed in the~~
26 ~~current taxable year by the taxpayer and by any trade or business~~
27 ~~acquired during the current taxable year.~~

28 ~~(2) For taxpayers who first commence doing business in this~~
29 ~~state during the taxable year, the number of full-time employees~~
30 ~~for the immediately preceding prior taxable year shall be zero.~~

31 ~~(d) In the case where the credit allowed by this section exceeds~~
32 ~~the “net tax,” the excess may be carried over to reduce the “net~~
33 ~~tax” in the following year, and succeeding seven years if necessary,~~
34 ~~until the credit is exhausted.~~

35 ~~(e) Any deduction otherwise allowed under this part for qualified~~
36 ~~wages shall not be reduced by the amount of the credit allowed~~
37 ~~under this section.~~

38 ~~(f) For purposes of this section:~~

1 ~~(1) All employees of the trades or businesses that are treated as~~
2 ~~related under either Section 267, 318, or 707 of the Internal~~
3 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

4 ~~(2) In determining whether the taxpayer has first commenced~~
5 ~~doing business in this state during the taxable year, the provisions~~
6 ~~of subdivision (f) of Section 17276, without application of~~
7 ~~paragraph (7) of that subdivision, shall apply.~~

8 ~~(g) (1) (A) Credit under this section and Section 23623 shall~~
9 ~~be allowed only for credits claimed on timely filed original returns~~
10 ~~received by the Franchise Tax Board on or before the cut-off date~~
11 ~~established by the Franchise Tax Board.~~

12 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
13 ~~last day of the calendar quarter within which the Franchise Tax~~
14 ~~Board estimates it will have received timely filed original returns~~
15 ~~claiming credits under this section and Section 23623 that~~
16 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
17 ~~for all taxable years.~~

18 ~~(2) The date a return is received shall be determined by the~~
19 ~~Franchise Tax Board.~~

20 ~~(3) (A) The determinations of the Franchise Tax Board with~~
21 ~~respect to the cut-off date, the date a return is received, and whether~~
22 ~~a return has been timely filed for purposes of this subdivision may~~
23 ~~not be reviewed in any administrative or judicial proceeding~~

24 ~~(B) Any disallowance of a credit claimed due to a determination~~
25 ~~under this subdivision, including the application of the limitation~~
26 ~~specified in paragraph (1), shall be treated as a mathematical error~~
27 ~~appearing on the return. Any amount of tax resulting from such~~
28 ~~disallowance may be assessed by the Franchise Tax Board in the~~
29 ~~same manner as provided by Section 19051.~~

30 ~~(4) The Franchise Tax Board shall periodically provide notice~~
31 ~~on its Web site with respect to the amount of credit under this~~
32 ~~section and Section 23623 claimed on timely filed original returns~~
33 ~~received by the Franchise Tax Board.~~

34 ~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines~~
35 ~~or procedures necessary or appropriate to carry out the purposes~~
36 ~~of this section, including any guidelines regarding the limitation~~
37 ~~on total credits allowable under this section and Section 23623~~
38 ~~and guidelines necessary to avoid the application of paragraph (2)~~
39 ~~of subdivision (f) through split-ups, shell corporations, partnerships,~~
40 ~~tiered ownership structures, or otherwise.~~

1 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
2 ~~Division 3 of Title 2 of the Government Code does not apply to~~
3 ~~any standard, criterion, procedure, determination, rule, notice, or~~
4 ~~guideline established or issued by the Franchise Tax Board~~
5 ~~pursuant to this section.~~

6 ~~(i) This section shall remain in effect only until December 1 of~~
7 ~~the calendar year after the year of the cut-off date, and as of that~~
8 ~~December 1 is repealed.~~

9 *SEC. 10. Section 17053.80 of the Revenue and Taxation Code,*
10 *as added by Section 3 of Chapter 17 of the Third Extraordinary*
11 *Session of the Statutes of 2009, is amended to read:*

12 17053.80. (a) (1) For each taxable year beginning on or after
13 January 1, 2009, and before January 1, 2011, there shall be allowed
14 as a credit against the “net tax,” as defined in Section 17039, three
15 thousand dollars (\$3,000) for each net increase in qualified
16 full-time employees, as specified in subdivision (c), hired during
17 the taxable year by a qualified employer.

18 (2) *For each taxable year beginning on or after January 1,*
19 *2011, and before January 1, 2013, there shall be allowed as a*
20 *credit against the “net tax,” as defined in Section 17039, four*
21 *thousand dollars (\$4,000) for each net increase in qualified*
22 *full-time employees, as specified in subdivision (c), hired during*
23 *the taxable year by a qualified employer.*

24 (b) For purposes of this section:

25 (1) “Acquired” includes any gift, inheritance, transfer incident
26 to divorce, or any other transfer, whether or not for consideration.

27 (2) “Qualified full-time employee” means:

28 (A) A qualified employee who was paid qualified wages *during*
29 *the taxable year* by the qualified employer for services of not less
30 than an average of 35 hours per week.

31 (B) A qualified employee who was a salaried employee and
32 was paid compensation during the taxable year for full-time
33 employment, within the meaning of Section 515 of the Labor Code,
34 by the qualified employer.

35 (3) ~~A~~(A) *For taxable years beginning on or after January 1,*
36 *2009, and before January 1, 2011, a “qualified employee” shall*
37 *not include any of the following:*

38 ~~(A)~~

39 (i) An employee certified as a qualified employee in an
40 enterprise zone designated in accordance with Chapter 12.8

1 (commencing with Section 7070) of Division 7 of Title 1 of the
2 Government Code.

3 ~~(B)~~

4 (ii) An employee certified as a qualified disadvantaged
5 individual in a manufacturing enhancement area designated in
6 accordance with Section 7073.8 of the Government Code.

7 ~~(C)~~

8 (iii) An employee certified as a qualified employee in a targeted
9 tax area designated in accordance with Section 7097 of the
10 Government Code.

11 ~~(D)~~

12 (iv) An employee certified as a qualified disadvantaged
13 individual or a qualified displaced employee in a local agency
14 military base recovery area (LAMBRA) designated in accordance
15 with Chapter 12.97 (commencing with Section 7105) of Division
16 7 of Title 1 of the Government Code.

17 ~~(E)~~

18 (v) An employee whose wages are included in calculating any
19 other credit allowed under this part.

20 (B) *For taxable years beginning on or after January 1, 2011,*
21 *and before January 1, 2013, a “qualified employee” shall not*
22 *include any employee whose wages or hours are included, directly*
23 *or indirectly, in calculating any other credit allowed under this*
24 *part.*

25 ~~(4) “Qualified—~~(A) *For taxable years beginning on or after*
26 *January 1, 2009, and before January 1, 2011, a “qualified*
27 *employer” means a taxpayer that, as of the last day of the preceding*
28 *taxable year, employed a total of 20 or fewer employees.*

29 (B) *For taxable years beginning on or after January 1, 2011,*
30 *and before January 1, 2013, a “qualified employer” means a*
31 *taxpayer that, as of the last day of the preceding taxable year,*
32 *employed a total of 50 or fewer employees.*

33 (5) “Qualified wages” means wages subject to Division 6
34 (commencing with Section 13000) of the Unemployment Insurance
35 Code.

36 (6) “Annual full-time equivalent” means either of the following:

37 (A) In the case of a full-time employee paid hourly qualified
38 wages, “annual full-time equivalent” means the total number of
39 hours worked for the taxpayer by the employee (not to exceed
40 2,000 hours per employee) divided by 2,000.

1 (B) In the case of a salaried full-time employee, “annual
2 full-time equivalent” means the total number of weeks worked for
3 the taxpayer by the employee divided by 52.

4 (c) The net increase in qualified full-time employees of a
5 qualified employer shall be determined as provided by this
6 subdivision:

7 (1) (A) The net increase in qualified full-time employees shall
8 be determined on an annual full-time equivalent basis by
9 subtracting from the amount determined in subparagraph (C) the
10 amount determined in subparagraph (B).

11 (B) The total number of qualified full-time employees employed
12 in the preceding taxable year by the taxpayer and by any trade or
13 business acquired by the taxpayer during the current taxable year.

14 (C) The total number of full-time employees employed in the
15 current taxable year by the taxpayer and by any trade or business
16 acquired during the current taxable year.

17 (2) For taxpayers ~~who~~ *that* first commence doing business in
18 this state during the taxable year, the number of full-time
19 employees for the immediately preceding prior taxable year shall
20 be zero.

21 (d) In the case where the credit allowed by this section exceeds
22 the “net tax,” the excess may be carried over to reduce the “net
23 tax” in the following year, and *the* succeeding seven years if
24 necessary, until the credit is exhausted.

25 (e) Any deduction otherwise allowed under this part for qualified
26 wages shall not be reduced by the amount of the credit allowed
27 under this section.

28 (f) For purposes of this section:

29 (1) All employees of the trades or businesses that are treated as
30 related under either Section 267, 318, or 707 of the Internal
31 Revenue Code shall be treated as employed by a single taxpayer.

32 (2) In determining whether the taxpayer has first commenced
33 doing business in this state during the taxable year, the provisions
34 of subdivision (f) of Section ~~47276~~ 17276.20, without application
35 of paragraph (7) of that subdivision, shall apply.

36 (g) (1) (A) Credit under this section ~~and Section 23623~~ shall
37 be allowed only for credits claimed on *a* timely filed original
38 ~~returns~~ *return* received by the Franchise Tax Board on or before
39 the cut-off date established by the Franchise Tax Board *or*
40 *December 31, 2013, whichever occurs earlier.*

(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in *subparagraph (B) of paragraph (1)*, shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its *Internet* Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns received by the Franchise Tax Board.

(h) (1) The Franchise Tax Board may prescribe rules, ~~guidelines~~ or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 23623 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cut-off date, and as of that December 1, *or December 31, 2013, whichever occurs earlier*, is repealed.

SEC. 11. Section 23101 of the Revenue and Taxation Code is amended to read:

1 23101. (a) “Doing business” means actively engaging in any
2 transaction for the purpose of financial or pecuniary gain or profit.

3 (b) For taxable years beginning on or after January 1, 2011, a
4 taxpayer is doing business in this state for a taxable year if any of
5 the following conditions has been satisfied:

6 (1) The taxpayer is organized or commercially domiciled in this
7 state.

8 (2) Sales, as defined in subdivision (e) or (f) of Section 25120
9 as applicable for the taxable year, of the taxpayer in this state
10 exceed the lesser of five hundred thousand dollars (\$500,000) or
11 25 percent of the taxpayer’s total sales. For purposes of this
12 paragraph, sales of the taxpayer include sales by an agent or
13 independent contractor of the taxpayer. For purposes of this
14 paragraph, sales in this state shall be determined using the rules
15 for assigning sales under ~~Section~~ *Sections* 25135 and subdivision
16 ~~(b) of Section 25136~~, and the regulations thereunder, as modified
17 by regulations under Section 25137.

18 (3) The real property and tangible personal property of the
19 taxpayer in this state exceed the lesser of fifty thousand dollars
20 (\$50,000) or 25 percent of the taxpayer’s total real property and
21 tangible personal property. The value of real and tangible personal
22 property and the determination of whether property is in this state
23 shall be determined using the rules contained in Sections 25129
24 to 25131, inclusive, and the regulations thereunder, as modified
25 by regulation under Section 25137.

26 (4) The amount paid in this state by the taxpayer for
27 compensation, as defined in subdivision (c) of Section 25120,
28 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent
29 of the total compensation paid by the taxpayer. Compensation in
30 this state shall be determined using the rules for assigning payroll
31 contained in Section 25133 and the regulations thereunder, as
32 modified by regulations under Section 25137.

33 (c) (1) The Franchise Tax Board shall annually revise the
34 amounts in paragraphs (2), (3), and (4) of subdivision (b) in
35 accordance with subdivision (h) of Section 17041.

36 (2) For purposes of the adjustment required by paragraph (1),
37 subdivision (h) of Section 17041 shall be applied by substituting
38 “2012” in lieu of “1988.”

39 (d) The sales, property, and payroll of the taxpayer include the
40 taxpayer’s pro rata or distributive share of pass-through entities.

1 For purposes of this subdivision, “pass-through entities” means a
2 partnership or an “S” corporation.

3 *SEC. 12. Section 23612.2 of the Revenue and Taxation Code*
4 *is amended to read:*

5 23612.2. (a) There shall be allowed as a credit against the
6 “~~tax~~” (as “*tax*,” as defined by Section ~~23036~~) 23036, for the
7 taxable year an amount equal to the sales or use tax paid or incurred
8 during the taxable year by the taxpayer in connection with the
9 taxpayer’s purchase of qualified property.

10 (b) For purposes of this section:

11 (1) “Taxpayer” means a corporation engaged in a trade or
12 business within an enterprise zone.

13 (2) “Qualified property” means:

14 (A) Any of the following:

15 (i) Machinery and machinery parts used for fabricating,
16 processing, assembling, and manufacturing.

17 (ii) Machinery and machinery parts used for the production of
18 renewable energy resources.

19 (iii) Machinery and machinery parts used for either of the
20 following:

21 (I) Air pollution control mechanisms.

22 (II) Water pollution control mechanisms.

23 (iv) Data-processing and communications equipment, including,
24 but not limited to, computers, computer-automated drafting
25 systems, copy machines, telephone systems, and faxes.

26 (v) Motion picture manufacturing equipment central to
27 production and postproduction, including, but not limited to,
28 cameras, audio recorders, and digital image and sound processing
29 equipment.

30 (B) The total cost of qualified property purchased and placed
31 in service in any taxable year that may be taken into account by
32 any taxpayer for purposes of claiming this credit shall not exceed
33 twenty million dollars (\$20,000,000).

34 (C) The qualified property is used by the taxpayer exclusively
35 in an enterprise zone.

36 (D) The qualified property is purchased and placed in service
37 before the date the enterprise zone designation expires, is no longer
38 binding, or becomes inoperative.

1 (3) “Enterprise zone” means the area designated as an enterprise
2 zone pursuant to Chapter 12.8 (commencing with Section 7070)
3 of Division 7 of Title 1 of the Government Code.

4 (c) If the taxpayer has purchased property upon which a use tax
5 has been paid or incurred, the credit provided by this section shall
6 be allowed only if qualified property of a comparable quality and
7 price is not timely available for purchase in this state.

8 (d) (1) In the case where the credit otherwise allowed under
9 this section exceeds the “tax” for the taxable year, that portion of
10 the credit which exceeds the “tax” may be carried over and added
11 to the credit, if any, in the following year, and succeeding years if
12 necessary, until the credit is exhausted. The credit shall be applied
13 first to the earliest taxable years possible.

14 (2) *Notwithstanding paragraph (1), for taxable years beginning*
15 *on or after January 1, 2011:*

16 (A) *In the case of any portion of a credit available for carryover*
17 *and attributable to a taxable year beginning before January 1,*
18 *2006, that portion shall not be carried forward.*

19 (B) *In the case of credits first allowed in taxable years beginning*
20 *on or after January 1, 2006, the carryover period shall be five*
21 *years from the year for which the credit was first allowed.*

22 (e) Any taxpayer who elects to be subject to this section shall
23 not be entitled to increase the basis of the qualified property as
24 otherwise required by Section 164(a) of the Internal Revenue Code
25 with respect to sales or use tax paid or incurred in connection with
26 the taxpayer’s purchase of qualified property.

27 (f) (1) The amount of credit otherwise allowed under this
28 section and Section 23622.7, including any credit carryover from
29 prior years, that may reduce the “tax” for the taxable year shall
30 not exceed the amount of tax which would be imposed on the
31 taxpayer’s business income attributable to the enterprise zone
32 determined as if that attributable income represented all of the
33 income of the taxpayer subject to tax under this part.

34 (2) Attributable income shall be that portion of the taxpayer’s
35 California source business income that is apportioned to the
36 enterprise zone. For that purpose, the taxpayer’s business income
37 attributable to sources in this state first shall be determined in
38 accordance with Chapter 17 (commencing with Section 25101).
39 That business income shall be further apportioned to the enterprise
40 zone in accordance with Article 2 (commencing with Section

1 25120) of Chapter 17, modified for purposes of this section in
2 accordance with paragraph (3).

3 (3) Business income shall be apportioned to the enterprise zone
4 by multiplying the total California business income of the taxpayer
5 by a fraction, the numerator of which is the property factor plus
6 the payroll factor, and the denominator of which is two. For
7 purposes of this paragraph:

8 (A) The property factor is a fraction, the numerator of which is
9 the average value of the taxpayer's real and tangible personal
10 property owned or rented and used in the enterprise zone during
11 the taxable year, and the denominator of which is the average value
12 of all the taxpayer's real and tangible personal property owned or
13 rented and used in this state during the taxable year.

14 (B) The payroll factor is a fraction, the numerator of which is
15 the total amount paid by the taxpayer in the enterprise zone during
16 the taxable year for compensation, and the denominator of which
17 is the total compensation paid by the taxpayer in this state during
18 the taxable year.

19 (4) The portion of any credit remaining, if any, after application
20 of this subdivision, shall be carried over to succeeding taxable
21 years, as if it were an amount exceeding the "tax" for the taxable
22 year, as provided in subdivision (d).

23 (g) The amendments made to this section by the act adding this
24 subdivision shall apply to taxable years beginning on or after
25 January 1, 1998.

26 (h) *For taxable years beginning on or after January 1, 2011,*
27 *the credit allowed by this section must be claimed on a timely filed,*
28 *original return of the taxpayer.*

29 SEC. 13. *Section 23622.7 of the Revenue and Taxation Code*
30 *is amended to read:*

31 23622.7. (a) (1) There shall be allowed a credit against the
32 "tax" (as defined by Section 23036) to a taxpayer who employs a
33 qualified employee in an enterprise zone during the taxable year
34 *who first commenced employment with the qualified taxpayer in*
35 *taxable years beginning before January 1, 2011.* The credit shall
36 be equal to the sum of each of the following:

37 ~~(1)~~

38 (A) Fifty percent of qualified wages in the first year of
39 employment.

40 ~~(2)~~

1 (B) Forty percent of qualified wages in the second year of
2 employment.

3 ~~(3)~~

4 (C) Thirty percent of qualified wages in the third year of
5 employment.

6 ~~(4)~~

7 (D) Twenty percent of qualified wages in the fourth year of
8 employment.

9 ~~(5)~~

10 (E) Ten percent of qualified wages in the fifth year of
11 employment.

12 (2) *There shall be allowed a credit against the “tax,” as defined*
13 *in Section 23036, to a taxpayer who employs a qualified taxpayer*
14 *in an enterprise zone during the taxable year who first commenced*
15 *employment with the qualified taxpayer in taxable years beginning*
16 *on or after January 1, 2011. The credit shall be equal to five*
17 *thousand dollars (\$5,000) for each net increase in qualified*
18 *full-time employees, as specified in subdivision (c), employed*
19 *during the taxable year by a qualified taxpayer.*

20 (b) For purposes of this section:

21 (1) ~~“Qualified”~~ *For taxable years beginning before January 1,*
22 *2011, “qualified wages” means:*

23 (A) (i) Except as provided in clause (ii), that portion of wages
24 paid or incurred by the taxpayer during the taxable year to qualified
25 employees that does not exceed 150 percent of the minimum wage.

26 (ii) For up to 1,350 qualified employees who are employed by
27 the taxpayer in the Long Beach Enterprise Zone in aircraft
28 manufacturing activities described in Codes 3721 to 3728,
29 inclusive, and Code 3812 of the Standard Industrial Classification
30 (SIC) Manual published by the United States Office of
31 Management and Budget, 1987 edition, “qualified wages” means
32 that portion of hourly wages that does not exceed 202 percent of
33 the minimum wage.

34 (B) Wages received during the 60-month period beginning with
35 the first day the employee commences employment with the
36 taxpayer. Reemployment in connection with any increase, including
37 a regularly occurring seasonal increase, in the trade or business
38 operations of the taxpayer does not constitute commencement of
39 employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) *“Acquired” includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.*

~~(2)~~
(3) “Minimum wage” means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

~~(3)~~
(4) “Zone expiration date” means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

~~(4)~~
(5) (A) “Qualified employee” means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer’s trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) ~~Is~~ *For an individual who first commenced employment with the taxpayer in taxable years beginning before January 1, 2011, he or she is* any of the following:

(I) Immediately preceding the qualified employee’s commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

1 (II) Immediately preceding the qualified employee's
2 commencement of employment with the taxpayer, was a person
3 eligible to be a voluntary or mandatory registrant under the Greater
4 Avenues for Independence Act of 1985 (GAIN) provided for
5 pursuant to Article 3.2 (commencing with Section 11320) of
6 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
7 Code, or its successor.

8 (III) Immediately preceding the qualified employee's
9 commencement of employment with the taxpayer, was an
10 economically disadvantaged individual 14 years of age or older.

11 (IV) Immediately preceding the qualified employee's
12 commencement of employment with the taxpayer, was a dislocated
13 worker who meets any of the following:

14 ~~(aa)~~

15 *(ia)* Has been terminated or laid off or who has received a notice
16 of termination or layoff from employment, is eligible for or has
17 exhausted entitlement to unemployment insurance benefits, and
18 is unlikely to return to his or her previous industry or occupation.

19 ~~(bb)~~

20 *(ib)* Has been terminated or has received a notice of termination
21 of employment as a result of any permanent closure or any
22 substantial layoff at a plant, facility, or enterprise, including an
23 individual who has not received written notification but whose
24 employer has made a public announcement of the closure or layoff.

25 ~~(ee)~~

26 *(ic)* Is long-term unemployed and has limited opportunities for
27 employment or reemployment in the same or a similar occupation
28 in the area in which the individual resides, including an individual
29 55 years of age or older who may have substantial barriers to
30 employment by reason of age.

31 ~~(dd)~~

32 *(id)* Was self-employed (including farmers and ranchers) and
33 is unemployed as a result of general economic conditions in the
34 community in which he or she resides or because of natural
35 disasters.

36 ~~(ee)~~

37 *(ie)* Was a civilian employee of the Department of Defense
38 employed at a military installation being closed or realigned under
39 the Defense Base Closure and Realignment Act of 1990.

40 ~~(ff)~~

1 ~~(if)~~ Was an active member of the armed forces or National Guard
2 as of September 30, 1990, and was either involuntarily separated
3 or separated pursuant to a special benefits program.

4 ~~(gg)~~
5 ~~(ig)~~ Is a seasonal or migrant worker who experiences chronic
6 seasonal unemployment and underemployment in the agriculture
7 industry, aggravated by continual advancements in technology and
8 mechanization.

9 ~~(hh)~~
10 ~~(ih)~~ Has been terminated or laid off, or has received a notice of
11 termination or layoff, as a consequence of compliance with the
12 Clean Air Act.

13 (V) Immediately preceding the qualified employee's
14 commencement of employment with the taxpayer, was a disabled
15 individual who is eligible for or enrolled in, or has completed a
16 state rehabilitation plan or is a service-connected disabled veteran,
17 veteran of the Vietnam era, or veteran who is recently separated
18 from military service.

19 (VI) Immediately preceding the qualified employee's
20 commencement of employment with the taxpayer, was an
21 ex-offender. An individual shall be treated as convicted if he or
22 she was placed on probation by a state court without a finding of
23 guilt.

24 (VII) Immediately preceding the qualified employee's
25 commencement of employment with the taxpayer, was a person
26 eligible for or a recipient of any of the following:

27 ~~(aa)~~
28 ~~(ia)~~ Federal Supplemental Security Income benefits.

29 ~~(bb)~~
30 ~~(ib)~~ Aid to Families with Dependent Children.

31 ~~(cc)~~
32 ~~(ic)~~ Food stamps.

33 ~~(dd)~~
34 ~~(id)~~ State and local general assistance.

35 (VIII) Immediately preceding the qualified employee's
36 commencement of employment with the taxpayer, was a member
37 of a federally recognized Indian tribe, band, or other group of
38 Native American descent.

39 (IX) Immediately preceding the qualified employee's
40 commencement of employment with the taxpayer, was a resident

1 of a targeted employment area (as defined in Section 7072 of the
2 Government Code).

3 (X) An employee who qualified the taxpayer for the enterprise
4 zone hiring credit under former Section 23622 or the program area
5 hiring credit under former Section 23623.

6 (XI) Immediately preceding the qualified employee's
7 commencement of employment with the taxpayer, was a member
8 of a targeted group, as defined in Section 51(d) of the Internal
9 Revenue Code, or its successor.

10 (B) Priority for employment shall be provided to an individual
11 who is enrolled in a qualified program under the federal Job
12 Training Partnership Act or the Greater Avenues for Independence
13 Act of 1985 or who is eligible as a member of a targeted group
14 under the Work Opportunity Tax Credit (Section 51 of the Internal
15 Revenue Code), or its successor.

16 (v) *For a qualified employee who first commences employment*
17 *with a taxpayer in taxable years beginning on or after January 1,*
18 *2011, that individual is a "qualified full-time employee" if, in*
19 *addition to any other requirement imposed by this section, he or*
20 *she was either:*

21 (I) *Paid wages by the qualified employer for services of not less*
22 *than an average of 35 hours per week.*

23 (II) *A salaried employee and was paid compensation during the*
24 *taxable year for full-time employment, within the meaning of*
25 *Section 515 of the Labor Code, by the qualified employer.*

26 ~~(5)~~

27 (6) (A) "Taxpayer" means a corporation engaged in a trade or
28 business within an enterprise zone designated pursuant to Chapter
29 12.8 (commencing with Section 7070) of Division 7 of Title 1 of
30 the Government Code.

31 (B) (i) *Notwithstanding subparagraph (A), a "taxpayer" shall*
32 *not include any person or entity described in subparagraph (A)*
33 *that first commences business activity in an enterprise zone during*
34 *the taxable year and has, within 24 months before the taxpayer*
35 *first commenced business activity in the enterprise zone, had an*
36 *overall reduction in the number of employees employed by the*
37 *taxpayer within the state outside of the enterprise zone, unless that*
38 *person or entity has made a written offer of employment to each*
39 *of the employees employed at the location within the state where*

1 *employment was reduced for such employees to continue their*
2 *employment with that person or entity within the enterprise zone.*

3 *(ii) In determining whether the taxpayer has first commenced*
4 *doing business in the enterprise zone during the taxable year, the*
5 *provisions of subdivision (g) of Section 24416.20, without*
6 *application of paragraph (7) of that subdivision, shall apply.*

7 *(iii) The written offer referred to in this subparagraph shall be*
8 *made prior to the termination of employment at the location within*
9 *the state that is outside the enterprise zone.*

10 *(iv) If any employee described in clause (i) does not timely*
11 *receive a written offer, the person or entity shall not be a qualified*
12 *taxpayer for that taxable year, even if other employees do receive*
13 *a written offer.*

14 *(v) A person or entity may be required to provide, upon request*
15 *of the Franchise Tax Board, written certification, under penalty*
16 *of perjury, that the requirements of this subparagraph were met.*

17 *(vi) All employees of the trades or businesses that are treated*
18 *as related under Section 267, 318, or 707 of the Internal Revenue*
19 *Code shall be treated as employed by a single taxpayer.*

20 ~~(6)~~

21 *(7) “Seasonal employment” means employment by a taxpayer*
22 *that has regular and predictable substantial reductions in trade or*
23 *business operations.*

24 *(8) “Annual full-time equivalent” means either of the following:*

25 *(A) In the case of a full-time employee paid hourly wages,*
26 *“annual full-time equivalent” means the total number of hours*
27 *worked for the taxpayer by the employee (not to exceed 2,000*
28 *hours per employee) divided by 2,000.*

29 *(B) In the case of a salaried full-time employee, “annual*
30 *full-time equivalent” means the total number of weeks worked for*
31 *the taxpayer by the employee divided by 52.*

32 *(c) Except as provided in paragraph (2), the net increase in*
33 *qualified full-time employees of a qualified taxpayer shall be*
34 *determined by paragraph (1):*

35 *(1) (A) (i) If the state’s average nonfarm employment, as*
36 *determined by the Franchise Tax Board based upon information*
37 *published by the Employment Development Department as of*
38 *March 15 of each calendar year, has not decreased for the*
39 *calendar years beginning on the third and the second January 1st*
40 *immediately preceding the beginning of the current taxable year,*

1 *as compared with second and first calendar years respectively,*
2 *then the net increase in qualified full-time employees shall be*
3 *determined on an annual full-time equivalent basis based on the*
4 *amount of the increase of qualified full-time equivalent employees*
5 *in excess of the greatest of the number of qualified full-time*
6 *equivalent employees employed by the qualified taxpayer in any*
7 *of the three immediately preceding taxable years, as determined*
8 *under subparagraph (B).*

9 *(ii) The amount determined under clause (i) shall include the*
10 *fractional amount, if any, of the increase for the taxable year.*

11 *(B) The net increase in qualified full-time employees for the*
12 *current taxable year shall be determined by subtracting the amount*
13 *determined under clause (ii) from the amount determined under*
14 *clause (i). If the amount determined under clause (ii) is equal to*
15 *or exceeds the amount determined under clause (i), the amount*
16 *determined under this subparagraph shall be zero.*

17 *(i) (I) The total number of qualified full-time employees*
18 *employed in the current taxable year by the qualified taxpayer and*
19 *by any trade or business acquired by the qualified taxpayer during*
20 *the current taxable year.*

21 *(II) The greatest total number of qualified full-time employees*
22 *employed in any of the three preceding taxable years by the*
23 *qualified taxpayer and by any trade or business acquired by the*
24 *qualified taxpayer during the current taxable year.*

25 *(ii) The increase in the total number of full-time employees*
26 *(determined under the full-time equivalent rules of paragraph (8)*
27 *of subdivision (b)) employed by the qualified taxpayer in this state*
28 *shall be determined by subtracting the amount determined under*
29 *subclause (II) from the amount determined under subclause (I). If*
30 *the amount determined under subclause (II) is equal to or exceeds*
31 *the amount determined under subclause (I), the amount determined*
32 *under this clause shall be zero.*

33 *(I) The total number of full-time employees employed in this*
34 *state in the current taxable year by the qualified taxpayer and by*
35 *any trade or business acquired by the qualified taxpayer during*
36 *the current taxable year.*

37 *(II) The greatest total number of full-time employees of the*
38 *qualified taxpayer employed in this state in any of the three*
39 *preceding taxable years by the qualified taxpayer and by any trade*

1 or business acquired by the qualified taxpayer during the current
2 taxable year.

3 (2) (A) (i) If there is a decrease in the state's nonfarm
4 employment, as determined by the Franchise Tax Board based
5 upon information published by the Employment Development
6 Department as of March 15 of each calendar year, for the calendar
7 years beginning on the third and the second January 1 immediately
8 preceding the current taxable year, the net increase in qualified
9 full-time employees shall be determined on an annual full-time
10 equivalent basis as the lesser of the amount determined under
11 subparagraph (C) or the amount determined under subparagraph
12 (B).

13 (ii) The amount determined under clause (i) shall include the
14 fractional amount, if any, of the increase for the taxable year.

15 (B) The increase in the total number of qualified full-time
16 employees shall be determined by subtracting the amount
17 determined under clause (ii) from the amount determined under
18 clause (i). If the amount determined under clause (ii) is equal to
19 or exceeds the amount determined under clause (i), the amount
20 determined under this subparagraph shall be zero.

21 (i) The total number of qualified full-time employees employed
22 in the current taxable year by the qualified taxpayer and by any
23 trade or business acquired by the qualified taxpayer during the
24 current taxable year.

25 (ii) The total number of qualified full-time employees employed
26 in the preceding taxable year by the qualified taxpayer and by any
27 trade or business acquired by the qualified taxpayer during the
28 current taxable year.

29 (C) The increase in the total number of full-time employees
30 (determined under the full-time equivalent rules of paragraph (8)
31 of subdivision (b)) employed by the qualified taxpayer in this state
32 shall be determined by subtracting the amount determined under
33 clause (ii) from the amount determined under clause (i). If the
34 amount determined under clause (ii) is equal to or exceeds the
35 amount determined under clause (i), the amount determined under
36 this subparagraph shall be zero.

37 (i) The total number of full-time employees employed in this
38 state in the current taxable year by the qualified taxpayer and by
39 any trade or business acquired by the qualified taxpayer during
40 the current taxable year.

(ii) *The total number of full-time employees of the qualified taxpayer employed in this state in the preceding taxable year by the qualified taxpayer and by any trade or business acquired by the qualified taxpayer during the current taxable year.*

(3) *For qualified taxpayers who first commence doing business in this state during the taxable year, the number of qualified full-time employees under subparagraph (B) of paragraph (1) and the number of full-time employees under subparagraph (C) of paragraph (2) for the preceding taxable year shall be zero.*

(4) *For purposes of determining the number of full-time employees of the qualified taxpayer who are employed in this state under paragraphs (1) and (2), only those employees who receive wages that are subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code from the qualified taxpayer comprising more than 50 percent of that employee's total wages received from the qualified taxpayer for the taxable year, shall be included.*

(5) *For purposes of determining the increase in the number of qualified full-time employees of a qualified taxpayer under this section and Sections 23622.8, 23634, and 23646, the increase shall be determined separately for the targeted tax area, and each enterprise zone, manufacturing enhancement area, or local agency military base recovery area with respect to which a taxpayer is a qualified taxpayer.*

(6) *Any determination of the Franchise Tax Board under this subdivision with respect to whether there is an increase, a decrease, or no change in the state's nonfarm employment for any calendar year shall be final and may not be reviewed in any administrative or judicial proceeding, even if the data published by the Employment Development Department as of March 15 of any calendar year upon which the Franchise Tax Board relied in making its determination is substantially revised and would otherwise change which formula is applicable under this subdivision.*

(e)

~~(d) The~~ *For qualified employees who first commenced employment with the taxpayer in taxable years beginning before January 1, 2011, the taxpayer shall do both of the following:*

(1) *Obtain from the Employment Development Department, as permitted by federal law, the local county or city Job Training*

1 Partnership Act administrative entity, the local county GAIN office
2 or social services agency, or the local government administering
3 the enterprise zone, a certification that provides that a qualified
4 employee meets the eligibility requirements specified in clause
5 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
6 Employment Development Department may provide preliminary
7 screening and referral to a certifying agency. The Employment
8 Development Department shall develop a form for this purpose.
9 The Department of Housing and Community Development shall
10 develop regulations governing the issuance of certificates by local
11 governments pursuant to subdivision (a) of Section 7086 of the
12 Government Code.

13 *(2) For any qualified employee who first commenced*
14 *employment in taxable years beginning before January 1, 2011,*
15 *for which, as of the later of July 1, 2011, or the date the qualified*
16 *employee first commenced employment, a certification described*
17 *in paragraph (1) has not been obtained and a request for*
18 *certification described in paragraph (1) has not been previously*
19 *submitted, then a request for certification described in paragraph*
20 *(1) with respect to that employee shall be submitted to the certifying*
21 *entity no later than the date that is the later of 90 days after July*
22 *1, 2011, or 30 days after the date the qualified employee first*
23 *commenced employment. A credit shall be allowed under this*
24 *section with respect to a qualified employee described in the*
25 *preceding sentence only if a request for certification was timely*
26 *submitted in accordance with this paragraph.*

27 ~~(2)~~

28 (3) Retain a copy of the certification and provide it upon request
29 to the Franchise Tax Board.

30 ~~(4)~~

31 (e) (1) For purposes of this section:

32 (A) All employees of all corporations which are members of
33 the same controlled group of corporations shall be treated as
34 employed by a single taxpayer.

35 (B) The credit, if any, allowable by this section to each member
36 shall be determined by reference to its proportionate share of the
37 expense of the qualified wages giving rise to the credit, and shall
38 be allocated in that manner.

1 (C) For purposes of this subdivision, “controlled group of
2 corporations” means “controlled group of corporations” as defined
3 in Section 1563(a) of the Internal Revenue Code, except that:

4 (i) “More than 50 percent” shall be substituted for “at least 80
5 percent” each place it appears in Section 1563(a)(1) of the Internal
6 Revenue Code.

7 (ii) The determination shall be made without regard to
8 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
9 Revenue Code.

10 (2) If an employer acquires the major portion of a trade or
11 business of another employer (hereinafter in this paragraph referred
12 to as the “predecessor”) or the major portion of a separate unit of
13 a trade or business of a predecessor, then, for purposes of applying
14 this section (other than subdivision ~~(e)~~ (f)) for any calendar year
15 ending after that acquisition, the employment relationship between
16 a qualified employee and an employer shall not be treated as
17 terminated if the employee continues to be employed in that trade
18 or business.

19 ~~(e)~~

20 (f) (1) (A) ~~If~~ *For qualified employees who first commence*
21 *employment with the qualified taxpayer in a taxable year beginning*
22 *before January 1, 2011, if the employment, other than seasonal*
23 *employment, of any qualified employee with respect to whom*
24 *qualified wages are taken into account under subdivision (a) is*
25 *terminated by the taxpayer at any time during the first 270 days*
26 *of that employment, whether or not consecutive, or before the*
27 *close of the 270th calendar day after the day in which that*
28 *employee completes 90 days of employment with the taxpayer,*
29 *the tax imposed by this part for the taxable year in which that*
30 *employment is terminated shall be increased by an amount equal*
31 *to the credit allowed under subdivision (a) for that taxable year*
32 *and all prior taxable years attributable to qualified wages paid or*
33 *incurred with respect to that employee.*

34 (B) If the seasonal employment of any qualified employee, with
35 respect to whom qualified wages are taken into account under
36 subdivision (a) is not continued by the taxpayer for a period of
37 270 days of employment during the 60-month period beginning
38 with the day the qualified employee commences seasonal
39 employment with the taxpayer, the tax imposed by this part, for
40 the taxable year that includes the 60th month following the month

1 in which the qualified employee commences seasonal employment
2 with the taxpayer, shall be increased by an amount equal to the
3 credit allowed under subdivision (a) for that taxable year and all
4 prior taxable years attributable to qualified wages paid or incurred
5 with respect to that qualified employee.

6 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
7 any of the following:

8 (i) A termination of employment of a qualified employee who
9 voluntarily leaves the employment of the taxpayer.

10 (ii) A termination of employment of a qualified employee who,
11 before the close of the period referred to in subparagraph (A) of
12 paragraph (1), becomes disabled and unable to perform the services
13 of that employment, unless that disability is removed before the
14 close of that period and the taxpayer fails to offer reemployment
15 to that employee.

16 (iii) A termination of employment of a qualified employee, if
17 it is determined that the termination was due to the misconduct (as
18 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
19 the California Code of Regulations) of that employee.

20 (iv) A termination of employment of a qualified employee due
21 to a substantial reduction in the trade or business operations of the
22 taxpayer.

23 (v) A termination of employment of a qualified employee, if
24 that employee is replaced by other qualified employees so as to
25 create a net increase in both the number of employees and the
26 hours of employment.

27 (B) Subparagraph (B) of paragraph (1) shall not apply to any
28 of the following:

29 (i) A failure to continue the seasonal employment of a qualified
30 employee who voluntarily fails to return to the seasonal
31 employment of the taxpayer.

32 (ii) A failure to continue the seasonal employment of a qualified
33 employee who, before the close of the period referred to in
34 subparagraph (B) of paragraph (1), becomes disabled and unable
35 to perform the services of that seasonal employment, unless that
36 disability is removed before the close of that period and the
37 taxpayer fails to offer seasonal employment to that qualified
38 employee.

39 (iii) A failure to continue the seasonal employment of a qualified
40 employee, if it is determined that the failure to continue the

seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

~~(f)~~

(g) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies.

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

~~(g)~~

(h) For purposes of this section, “enterprise zone” means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

~~(h)~~

(i) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The credit shall also be reduced

1 by the federal credit allowed under Section 51 of the Internal
2 Revenue Code.

3 In addition, any deduction otherwise allowed under this part for
4 the wages or salaries paid or incurred by the taxpayer upon which
5 the credit is based shall be reduced by the amount of the credit,
6 prior to any reduction required by subdivision-~~(i)~~ (j) or-~~(j)~~ (k).

7 ~~(i)~~

8 (j) (1) In the case where the credit otherwise allowed under this
9 section exceeds the “tax” for the taxable year, that portion of the
10 credit that exceeds the “tax” may be carried over and added to the
11 credit, if any, in succeeding taxable years, until the credit is
12 exhausted. The credit shall be applied first to the earliest taxable
13 years possible.

14 (2) *Notwithstanding paragraph (1), for taxable years beginning*
15 *on or after January 1, 2011:*

16 (A) *In the case of any portion of a credit available for carryover*
17 *and attributable to a taxable year beginning before January 1,*
18 *2006, that portion shall not be carried forward.*

19 (B) *In the case of credits first allowed in taxable years beginning*
20 *on or after January 1, 2006, the carryover period shall be five*
21 *years from the year for which the credit was first allowed.*

22 ~~(j)~~

23 (k) (1) The amount of the credit otherwise allowed under this
24 section and Section 23612.2, including any credit carryover from
25 prior years, that may reduce the “tax” for the taxable year shall
26 not exceed the amount of tax which would be imposed on the
27 taxpayer’s business income attributable to the enterprise zone
28 determined as if that attributable income represented all of the
29 income of the taxpayer subject to tax under this part.

30 (2) Attributable income shall be that portion of the taxpayer’s
31 California source business income that is apportioned to the
32 enterprise zone. For that purpose, the taxpayer’s business
33 attributable to sources in this state first shall be determined in
34 accordance with Chapter 17 (commencing with Section 25101).
35 That business income shall be further apportioned to the enterprise
36 zone in accordance with Article 2 (commencing with Section
37 25120) of Chapter 17, modified for purposes of this section in
38 accordance with paragraph (3).

39 (3) Business income shall be apportioned to the enterprise zone
40 by multiplying the total California business income of the taxpayer

by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the income year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "tax" for the taxable year, as provided in subdivision-(i) (j).

~~(k)~~

(l) The changes made to this section by the act adding this subdivision shall apply to taxable years on or after January 1, 1997.

(m) For taxable years beginning on or after January 1, 2011, the credit allowed by this section must be claimed on a timely filed original return of the taxpayer.

SEC. 14. Section 23622.8 of the Revenue and Taxation Code is amended to read:

23622.8. (a) (1) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the "tax" ~~(as "tax," as defined in Section 23036)~~ 23036, to a qualified taxpayer for hiring a qualified disadvantaged individual during the taxable year for employment in the manufacturing enhancement area. ~~The~~ For qualified disadvantaged individuals who first commenced employment in taxable years beginning on or after January 1, 1998, and before January 1, 2011, the credit shall be equal to the sum of each of the following:

~~(1)~~

(A) Fifty percent of the qualified wages in the first year of employment.

~~(2)~~

1 (B) Forty percent of the qualified wages in the second year of
2 employment.

3 ~~(3)~~

4 (C) Thirty percent of the qualified wages in the third year of
5 employment.

6 ~~(4)~~

7 (D) Twenty percent of the qualified wages in the fourth year of
8 employment.

9 ~~(5)~~

10 (E) Ten percent of the qualified wages in the fifth year of
11 employment.

12 (2) *For qualified disadvantaged individuals who first*
13 *commenced employment in taxable years beginning on or after*
14 *January 1, 2011, the credit shall be equal to five thousand dollars*
15 *(\$5,000) for each net increase in qualified full-time employees, as*
16 *specified in subdivision (c), employed during the taxable year by*
17 *a qualified taxpayer.*

18 (b) For purposes of this section:

19 (1) ~~“Qualified~~ *For taxable years beginning on or after January*
20 *1, 1998, and before January 1, 2011, “qualified wages” means:*

21 (A) That portion of wages paid or incurred by the qualified
22 taxpayer during the taxable year to qualified disadvantaged
23 individuals that does not exceed 150 percent of the minimum wage.

24 (B) The total amount of qualified wages which may be taken
25 into account for purposes of claiming the credit allowed under this
26 section shall not exceed two million dollars (\$2,000,000) per
27 taxable year.

28 (C) Wages received during the 60-month period beginning with
29 the first day the qualified disadvantaged individual commences
30 employment with the qualified taxpayer. Reemployment in
31 connection with any increase, including a regularly occurring
32 seasonal increase, in the trade or business operations of the
33 qualified taxpayer does not constitute commencement of
34 employment for purposes of this section.

35 (D) Qualified wages do not include any wages paid or incurred
36 by the qualified taxpayer on or after the manufacturing
37 enhancement area expiration date. However, wages paid or incurred
38 with respect to qualified employees who are employed by the
39 qualified taxpayer within the manufacturing enhancement area
40 within the 60-month period prior to the manufacturing enhancement

1 area expiration date shall continue to qualify for the credit under
2 this section after the manufacturing enhancement area expiration
3 date, in accordance with all provisions of this section applied as
4 if the manufacturing enhancement area designation were still in
5 existence and binding.

6 (2) *“Acquired” includes any gift, inheritance, transfer incident*
7 *to divorce, or any other transfer, whether or not for consideration.*

8 ~~(2)~~

9 (3) “Minimum wage” means the wage established by the
10 Industrial Welfare Commission as provided for in Chapter 1
11 (commencing with Section 1171) of Part 4 of Division 2 of the
12 Labor Code.

13 ~~(3)~~

14 (4) “Manufacturing enhancement area” means an area designated
15 pursuant to Section 7073.8 of the Government Code according to
16 the procedures of Chapter 12.8 (commencing with Section 7070)
17 of Division 7 of Title 1 of the Government Code.

18 ~~(4)~~

19 (5) “Manufacturing enhancement area expiration date” means
20 the date the manufacturing enhancement area designation expires,
21 is no longer binding, or becomes inoperative.

22 ~~(5)~~

23 (6) “Qualified disadvantaged individual” means an individual
24 who satisfies all of the following requirements:

25 (A) (i) At least 90 percent of whose services for the qualified
26 taxpayer during the taxable year are directly related to the conduct
27 of the qualified taxpayer’s trade or business located in a
28 manufacturing enhancement area.

29 (ii) Who performs at least 50 percent of his or her services for
30 the qualified taxpayer during the taxable year in the manufacturing
31 enhancement area.

32 (B) Who is hired by the qualified taxpayer after the designation
33 of the area as a manufacturing enhancement area in which the
34 individual’s services were primarily performed.

35 (C) ~~Who~~ *For an individual who first commenced employment*
36 *with the qualified taxpayer in taxable years beginning on or after*
37 *January 1, 1998, and before January 1, 2011, he or she* is any of
38 the following immediately preceding the individual’s
39 commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) or its successor.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985, or its successor, as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, or its successor, whether or not this program is in effect.

(v) For a qualified disadvantaged individual who first commences employment in taxable years beginning on or after January 1, 2011, that individual is a “qualified full-time employee” if, in addition to any other requirement imposed by this section, he or she was either:

(I) Paid wages by the qualified employer for services of not less than an average of 35 hours per week.

(II) A salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

~~(6)~~

(7) (A) “Qualified taxpayer” means any corporation engaged in a trade or business within a manufacturing enhancement area designated pursuant to Section 7073.8 of the Government Code and that meets all of the following requirements:

~~(A)~~

(i) Is engaged in those lines of business described in Codes 0211 to 0291, inclusive, Code 0723, or in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

~~(B)~~

(ii) At least 50 percent of the qualified taxpayer’s workforce hired after the designation of the manufacturing enhancement area is composed of individuals who, at the time of hire, are residents of the county in which the manufacturing enhancement area is located.

~~(C)~~

1 (iii) Of this percentage of local hires, at least 30 percent shall
2 be qualified disadvantaged individuals.

3 (B) (i) *Notwithstanding subparagraph (A), a “qualified*
4 *taxpayer” shall not include any person or entity described in*
5 *subparagraph (A) that first commences business activity in a*
6 *manufacturing enhancement area during the taxable year and has,*
7 *within 24 months before the taxpayer first commenced business*
8 *activity in the manufacturing area, had an overall reduction in the*
9 *number of employees employed by the taxpayer within the state*
10 *outside of the manufacturing enhancement area, unless that person*
11 *or entity has made a written offer of employment to each of the*
12 *employees employed at the location within the state where*
13 *employment was reduced for such employees to continue their*
14 *employment with that person or entity within the manufacturing*
15 *enhancement area.*

16 (ii) *The written offer referred to in this subparagraph shall be*
17 *made prior to the termination of employment at the location within*
18 *the state that is outside the manufacturing enhancement area.*

19 (iii) *If any employee described in clause (i) of this subparagraph*
20 *does not timely receive a written offer, the person or entity shall*
21 *not be a qualified taxpayer for that taxable year, even if other*
22 *employees do receive a written offer.*

23 (iv) *A person or entity may be required to provide, upon request*
24 *of the Franchise Tax Board, written certification, under penalty*
25 *of perjury, that the requirements of this subparagraph were met.*

26 (v) *All employees of the trades or businesses that are treated*
27 *as related under Section 267, 318, or 707 of the Internal Revenue*
28 *Code shall be treated as employed by a single qualified taxpayer.*

29 (vi) *In determining whether the qualified taxpayer has first*
30 *commenced doing business in the manufacturing enhancement*
31 *area during the taxable year, the provisions of subdivision (g) of*
32 *Section 24416.20, without application of paragraph (7) of that*
33 *subdivision, shall apply.*

34 ~~(7)~~

35 (8) *“Seasonal employment” means employment by a qualified*
36 *taxpayer that has regular and predictable substantial reductions in*
37 *trade or business operations.*

38 (9) *“Annual full-time equivalent” means either of the following:*

39 (A) *In the case of a full-time employee paid hourly wages,*
40 *“annual full-time equivalent” means the total number of hours*

1 worked for the taxpayer by the employee (not to exceed 2,000
2 hours per employee) divided by 2,000.

3 (B) In the case of a salaried full-time employee, “annual
4 full-time equivalent” means the total number of weeks worked for
5 the taxpayer by the employee divided by 52.

6 (c) Except as provided in paragraph (2), the net increase in
7 qualified full-time employees of a qualified taxpayer shall be
8 determined by paragraph (1):

9 (1) (A) (i) If the state’s average nonfarm employment, as
10 determined by the Franchise Tax Board based upon information
11 published by the Employment Development Department as of
12 March 15 of each calendar year, has not decreased for the
13 calendar years beginning on the third and the second January 1
14 immediately preceding the beginning of the current taxable year,
15 as compared with second and first calendar years respectively,
16 then the net increase in qualified full-time employees shall be
17 determined on an annual full-time equivalent basis based on the
18 amount of the increase of qualified full-time equivalent employees
19 in excess of the greatest of the number of qualified full-time
20 equivalent employees employed by the qualified taxpayer in any
21 of the three immediately preceding taxable years, as determined
22 under subparagraph (B).

23 (ii) The amount determined under clause (i) shall include the
24 fractional amount, if any, of the increase for the taxable year.

25 (B) The net increase in qualified full-time employees for the
26 current taxable year shall be determined by subtracting the amount
27 determined under clause (ii) from the amount determined under
28 clause (i). If the amount determined under clause (ii) is equal to
29 or exceeds the amount determined under clause (i), the amount
30 determined under this subparagraph shall be zero.

31 (i) (I) The total number of qualified full-time employees
32 employed in the current taxable year by the qualified taxpayer and
33 by any trade or business acquired by the qualified taxpayer during
34 the current taxable year.

35 (II) The greatest total number of qualified full-time employees
36 employed in any of the three preceding taxable years by the
37 qualified taxpayer and by any trade or business acquired by the
38 qualified taxpayer during the current taxable year.

39 (ii) The increase in the total number of full-time employees
40 (determined under the full-time equivalent rules of paragraph (9)

1 of subdivision (b)) employed by the qualified taxpayer in this state
2 shall be determined by subtracting the amount determined under
3 subclause (II) from the amount determined under subclause (I). If
4 the amount determined under subclause (II) is equal to or exceeds
5 the amount determined under subclause (I), the amount determined
6 under this clause shall be zero.

7 (I) The total number of full-time employees employed in this
8 state in the current taxable year by the qualified taxpayer and by
9 any trade or business acquired by the qualified taxpayer during
10 the current taxable year.

11 (II) The greatest total number of full-time employees of the
12 qualified taxpayer employed in this state in any of the three
13 preceding taxable years by the qualified taxpayer and by any trade
14 or business acquired by the qualified taxpayer during the current
15 taxable year.

16 (2) (A) (i) If there is a decrease in the state's nonfarm
17 employment, as determined by the Franchise Tax Board based
18 upon information published by the Employment Development
19 Department as of March 15 of each calendar year, for the calendar
20 years beginning on the third and the second January 1 immediately
21 preceding the current taxable year, the net increase in qualified
22 full-time employees shall be determined on an annual full-time
23 equivalent basis as the lesser of the amount determined under
24 subparagraph (C) or the amount determined under subparagraph
25 (B).

26 (ii) The amount determined under clause (i) shall include the
27 fractional amount, if any, of the increase for the taxable year.

28 (B) The increase in the total number of qualified full-time
29 employees shall be determined by subtracting the amount
30 determined under clause (ii) from the amount determined under
31 clause (i). If the amount determined under clause (ii) is equal to
32 or exceeds the amount determined under clause (i), the amount
33 determined under this subparagraph shall be zero.

34 (i) The total number of qualified full-time employees employed
35 in the current taxable year by the qualified taxpayer and by any
36 trade or business acquired by the qualified taxpayer during the
37 current taxable year.

38 (ii) The total number of qualified full-time employees employed
39 in the preceding taxable year by the qualified taxpayer and by any

1 trade or business acquired by the qualified taxpayer during the
2 current taxable year.

3 (C) The increase in the total number of full-time employees
4 (determined under the full-time equivalent rules of paragraph (9)
5 of subdivision (b)) employed by the qualified taxpayer in this state
6 shall be determined by subtracting the amount determined under
7 clause (ii) from the amount determined under clause (i). If the
8 amount determined under clause (ii) is equal to or exceeds the
9 amount determined under clause (i), the amount determined under
10 this subparagraph shall be zero.

11 (i) The total number of full-time employees employed in this
12 state in the current taxable year by the qualified taxpayer and by
13 any trade or business acquired by the qualified taxpayer during
14 the current taxable year.

15 (ii) The total number of full-time employees of the qualified
16 taxpayer employed in this state in the preceding taxable year by
17 the qualified taxpayer and by any trade or business acquired by
18 the qualified taxpayer during the current taxable year.

19 (3) For qualified taxpayers who first commence doing business
20 in this state during the taxable year, the number of qualified
21 full-time employees under subparagraph (B) of paragraph (1) and
22 the number of full-time employees under subparagraph (C) of
23 paragraph (2) for the preceding taxable year shall be zero.

24 (4) For purposes of determining the number of full-time
25 employees of the qualified taxpayer who are employed in this state
26 under paragraphs (1) and (2), only those employees who receive
27 wages that are subject to Division 6 (commencing with Section
28 13000) of the Unemployment Insurance Code from the qualified
29 taxpayer comprising more than 50 percent of that employee's total
30 wages received from the qualified taxpayer for the taxable year,
31 shall be included.

32 (5) For purposes of determining the increase in the number of
33 qualified full-time employees of a qualified taxpayer under this
34 section and Sections 23622.7, 23634, and 23646, the increase shall
35 be determined separately for the targeted tax area, and each
36 enterprise zone, manufacturing enhancement area, or local agency
37 military base recovery area with respect to which a taxpayer is a
38 qualified taxpayer.

39 (6) Any determination of the Franchise Tax Board under this
40 subdivision with respect to whether there is an increase, a

1 *decrease, or no change in the state's nonfarm employment for any*
2 *calendar year shall be final and may not be reviewed in any*
3 *administrative or judicial proceeding, even if the data published*
4 *by the Employment Development Department as of March 15 of*
5 *any calendar year upon which the Franchise Tax Board relied in*
6 *making its determination is substantially revised and would*
7 *otherwise change which formula is applicable under this*
8 *subdivision.*

9 ~~(e)~~

10 (d) (1) For purposes of this section, all of the following apply:

11 (A) All employees of all corporations that are members of the
12 same controlled group of corporations shall be treated as employed
13 by a single qualified taxpayer.

14 (B) The credit (if any) allowable by this section with respect to
15 each member shall be determined by reference to its proportionate
16 share of the expenses of the qualified wages giving rise to the
17 credit and shall be allocated in that manner.

18 (C) Principles that apply in the case of controlled groups of
19 corporations, as specified in subdivision (d) of Section 23622.7,
20 shall apply with respect to determining employment.

21 (2) If a qualified taxpayer acquires the major portion of a trade
22 or business of another employer (hereinafter in this paragraph
23 referred to as the "predecessor") or the major portion of a separate
24 unit of a trade or business of a predecessor, then, for purposes of
25 applying this section (other than subdivision~~(d)~~ ~~(e)~~) for any
26 calendar year ending after that acquisition, the employment
27 relationship between a qualified disadvantaged individual and a
28 qualified taxpayer shall not be treated as terminated if the qualified
29 disadvantaged individual continues to be employed in that trade
30 or business.

31 ~~(d)~~

32 (e) (1) (A) ~~If~~ *For qualified disadvantaged individuals who first*
33 *commenced employment with a qualified taxpayer in taxable years*
34 *beginning on or after January 1, 1998, and before January 1,*
35 *2011, if the employment, other than seasonal employment, of any*
36 *qualified disadvantaged individual, with respect to whom qualified*
37 *wages are taken into account under subdivision (b) is terminated*
38 *by the qualified taxpayer at any time during the first 270 days of*
39 *that employment (whether or not consecutive) or before the close*
40 *of the 270th calendar day after the day in which that qualified*

1 disadvantaged individual completes 90 days of employment with
2 the qualified taxpayer, the tax imposed by this part for the taxable
3 year in which that employment is terminated shall be increased by
4 an amount equal to the credit allowed under subdivision (a) for
5 that taxable year and all prior taxable years attributable to qualified
6 wages paid or incurred with respect to that qualified disadvantaged
7 individual.

8 (B) If the seasonal employment of any qualified disadvantaged
9 individual, with respect to whom qualified wages are taken into
10 account under subdivision (a) is not continued by the qualified
11 taxpayer for a period of 270 days of employment during the
12 60-month period beginning with the day the qualified
13 disadvantaged individual commences seasonal employment with
14 the qualified taxpayer, the tax imposed by this part, for the income
15 year that includes the 60th month following the month in which
16 the qualified disadvantaged individual commences seasonal
17 employment with the qualified taxpayer, shall be increased by an
18 amount equal to the credit allowed under subdivision (a) for that
19 taxable year and all prior taxable years attributable to qualified
20 wages paid or incurred with respect to that qualified disadvantaged
21 individual.

22 (2) (A) Subparagraph (A) of paragraph (1) does not apply to
23 any of the following:

24 (i) A termination of employment of a qualified disadvantaged
25 individual who voluntarily leaves the employment of the qualified
26 taxpayer.

27 (ii) A termination of employment of a qualified disadvantaged
28 individual who, before the close of the period referred to in
29 subparagraph (A) of paragraph (1), becomes disabled to perform
30 the services of that employment, unless that disability is removed
31 before the close of that period and the qualified taxpayer fails to
32 offer reemployment to that individual.

33 (iii) A termination of employment of a qualified disadvantaged
34 individual, if it is determined that the termination was due to the
35 misconduct (as defined in Sections 1256-30 to 1256-43, inclusive,
36 of Title 22 of the California Code of Regulations) of that individual.

37 (iv) A termination of employment of a qualified disadvantaged
38 individual due to a substantial reduction in the trade or business
39 operations of the qualified taxpayer.

1 (v) A termination of employment of a qualified disadvantaged
2 individual, if that individual is replaced by other qualified
3 disadvantaged individuals so as to create a net increase in both the
4 number of employees and the hours of employment.

5 (B) Subparagraph (B) of paragraph (1) shall not apply to any
6 of the following:

7 (i) A failure to continue the seasonal employment of a qualified
8 disadvantaged individual who voluntarily fails to return to the
9 seasonal employment of the qualified taxpayer.

10 (ii) A failure to continue the seasonal employment of a qualified
11 disadvantaged individual who, before the close of the period
12 referred to in subparagraph (B) of paragraph (1), becomes disabled
13 and unable to perform the services of that seasonal employment,
14 unless that disability is removed before the close of that period
15 and the qualified taxpayer fails to offer seasonal employment to
16 that qualified disadvantaged individual.

17 (iii) A failure to continue the seasonal employment of a qualified
18 disadvantaged individual, if it is determined that the failure to
19 continue the seasonal employment was due to the misconduct (as
20 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
21 the California Code of Regulations) of that qualified disadvantaged
22 individual.

23 (iv) A failure to continue seasonal employment of a qualified
24 disadvantaged individual due to a substantial reduction in the
25 regular seasonal trade or business operations of the qualified
26 taxpayer.

27 (v) A failure to continue the seasonal employment of a qualified
28 disadvantaged individual, if that qualified disadvantaged individual
29 is replaced by other qualified disadvantaged individuals so as to
30 create a net increase in both the number of seasonal employees
31 and the hours of seasonal employment.

32 (C) For purposes of paragraph (1), the employment relationship
33 between the qualified taxpayer and a qualified disadvantaged
34 individual shall not be treated as terminated by either of the
35 following:

36 (i) By a transaction to which Section 381(a) of the Internal
37 Revenue Code applies, if the qualified disadvantaged individual
38 continues to be employed by the acquiring corporation.

39 (ii) By reason of a mere change in the form of conducting the
40 trade or business of the qualified taxpayer, if the qualified

1 disadvantaged individual continues to be employed in that trade
2 or business and the qualified taxpayer retains a substantial interest
3 in that trade or business.

4 (3) Any increase in tax under paragraph (1) shall not be treated
5 as tax imposed by this part for purposes of determining the amount
6 of any credit allowable under this part.

7 ~~(e)~~

8 (f) The credit shall be reduced by the credit allowed under
9 Section 23621. The credit shall also be reduced by the federal
10 credit allowed under Section 51 of the Internal Revenue Code.

11 In addition, any deduction otherwise allowed under this part for
12 the wages or salaries paid or incurred by the qualified taxpayer
13 upon which the credit is based shall be reduced by the amount of
14 the credit, prior to any reduction required by subdivision-~~(f)~~ (g) or
15 ~~(g)~~ (h).

16 ~~(f)~~

17 (g) (1) In the case where the credit otherwise allowed under
18 this section exceeds the “tax” for the taxable year, that portion of
19 the credit that exceeds the “tax” may be carried over and added to
20 the credit, if any, in succeeding years, until the credit is exhausted.
21 The credit shall be applied first to the earliest taxable years
22 possible.

23 (2) *Notwithstanding paragraph (1), for taxable years beginning*
24 *on or after January 1, 2011:*

25 (A) *In the case of any portion of a credit available for carryover*
26 *and attributable to a taxable year beginning before January 1,*
27 *2006, that portion shall not be carried forward.*

28 (B) *In the case of credits first allowed in taxable years beginning*
29 *on or after January 1, 2006, the carryover period shall be five*
30 *years from the year for which the credit was first allowed.*

31 ~~(g)~~

32 (h) (1) The amount of credit otherwise allowed under this
33 section, including prior year credit carryovers, that may reduce
34 the “tax” for the taxable year shall not exceed the amount of tax
35 that would be imposed on the qualified taxpayer’s business income
36 attributed to a manufacturing enhancement area determined as if
37 that attributed income represented all of the net income of the
38 qualified taxpayer subject to tax under this part.

39 (2) Attributable income is that portion of the taxpayer’s
40 California source business income that is apportioned to the

1 manufacturing enhancement area. For that purpose, the taxpayer's
2 business income attributable to sources in this state first shall be
3 determined in accordance with Chapter 17 (commencing with
4 Section 25101). That business income shall be further apportioned
5 to the manufacturing enhancement area in accordance with Article
6 2 (commencing with Section 25120) of Chapter 17, modified for
7 purposes of this section in accordance with paragraph (3).

8 (3) Income shall be apportioned to a manufacturing enhancement
9 area by multiplying the total California business income of the
10 taxpayer by a fraction, the numerator of which is the property
11 factor plus the payroll factor, and the denominator of which is two.
12 For the purposes of this paragraph:

13 (A) The property factor is a fraction, the numerator of which is
14 the average value of the taxpayer's real and tangible personal
15 property owned or rented and used in the manufacturing
16 enhancement area during the taxable year, and the denominator
17 of which is the average value of all the taxpayer's real and tangible
18 personal property owned or rented and used in this state during
19 the taxable year.

20 (B) The payroll factor is a fraction, the numerator of which is
21 the total amount paid by the taxpayer in the manufacturing
22 enhancement area during the taxable year for compensation, and
23 the denominator of which is the total compensation paid by the
24 taxpayer in this state during the taxable year.

25 (4) The portion of any credit remaining, if any, after application
26 of this subdivision, shall be carried over to succeeding taxable
27 years, as if it were an amount exceeding the "tax" for the taxable
28 year, as provided in subdivision ~~(g)~~ (h).

29 ~~(h)~~

30 (i) If the taxpayer is allowed a credit pursuant to this section for
31 qualified wages paid or incurred, only one credit shall be allowed
32 to the taxpayer under this part with respect to any wage consisting
33 in whole or in part of those qualified wages.

34 ~~(i)~~

35 (j) ~~The~~ *For qualified disadvantaged individuals who commenced*
36 *employment in taxable years beginning on or after January 1,*
37 *1998, and before January 1, 2011, the* qualified taxpayer shall do
38 ~~both of~~ the following:

39 (1) Obtain from the Employment Development Department, as
40 permitted by federal law, the local county or city Job Training

1 Partnership Act administrative entity, the local county GAIN office
2 or social services agency, or the local government administering
3 the manufacturing enhancement area, a certification that provides
4 that a qualified disadvantaged individual meets the eligibility
5 requirements specified in paragraph (5) of subdivision (b). The
6 Employment Development Department may provide preliminary
7 screening and referral to a certifying agency. The Department of
8 Housing and Community Development shall develop regulations
9 governing the issuance of certificates pursuant to subdivision (d)
10 of Section 7086 of the Government Code and shall develop forms
11 for this purpose.

12 *(2) For any qualified disadvantaged individual who first*
13 *commenced employment in taxable years beginning before January*
14 *1, 2011, for which, as of the later of July 1, 2011, or the date the*
15 *qualified disadvantaged individual first commenced employment,*
16 *a certification described in paragraph (1) has not been obtained*
17 *and a request for certification described in paragraph (1) has not*
18 *been previously submitted, then a request for certification*
19 *described in paragraph (1) with respect to that employee shall be*
20 *submitted to the certifying entity no later than the date that is the*
21 *later of 90 days after July 1, 2011, or 30 days after the date the*
22 *qualified disadvantaged individual first commenced employment.*
23 *A credit shall be allowed under this section with respect to a*
24 *qualified disadvantaged individual described in the preceding*
25 *sentence only if a request for certification was timely submitted in*
26 *accordance with this paragraph.*

27 ~~(2)~~

28 (3) Retain a copy of the certification and provide it upon request
29 to the Franchise Tax Board.

30 *(k) For taxable years beginning on or after January 1, 2011,*
31 *the credit allowed by this section must be claimed on a timely filed*
32 *original return of the qualified taxpayer.*

33 *SEC. 15. Section 23623 of the Revenue and Taxation Code, as*
34 *added by Section 8 of Chapter 10 of the Third Extraordinary*
35 *Session of the Statutes of 2009, is repealed.*

36 ~~23623. (a) For each taxable year beginning on or after January~~
37 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~
38 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
39 ~~net increase in qualified full-time employees, as specified in~~

1 ~~subdivision (c), hired during the taxable year by a qualified~~
2 ~~employer.~~

3 ~~(b) For purposes of this section:~~

4 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
5 ~~to divorce, or any other transfer, whether or not for consideration.~~

6 ~~(2) “Qualified full-time employee” means:~~

7 ~~(A) A qualified employee who was paid qualified wages during~~
8 ~~the taxable year by the qualified employer for services of not less~~
9 ~~than an average of 35 hours per week.~~

10 ~~(B) A qualified employee who was a salaried employee and~~
11 ~~was paid compensation during the taxable year for full-time~~
12 ~~employment, within the meaning of Section 515 of the Labor Code,~~
13 ~~by the qualified employer.~~

14 ~~(3) A “qualified employee” shall not include any of the~~
15 ~~following:~~

16 ~~(A) An employee certified as a qualified employee in an~~
17 ~~enterprise zone designated in accordance with Chapter 12.8~~
18 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
19 ~~Government Code.~~

20 ~~(B) An employee certified as a qualified disadvantaged~~
21 ~~individual in a manufacturing enhancement area designated in~~
22 ~~accordance with Section 7073.8 of the Government Code.~~

23 ~~(C) An employee certified as a qualified employee in a targeted~~
24 ~~tax area designated in accordance with Section 7097 of the~~
25 ~~Government Code.~~

26 ~~(D) An employee certified as a qualified disadvantaged~~
27 ~~individual or a qualified displaced employee in a local agency~~
28 ~~military base recovery area (LAMBRA) designated in accordance~~
29 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
30 ~~7 of Title 1 of the Government Code.~~

31 ~~(E) An employee whose wages are included in calculating any~~
32 ~~other credit allowed under this part.~~

33 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
34 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
35 ~~employees.~~

36 ~~(5) “Qualified wages” means wages subject to Division 6~~
37 ~~(commencing with Section 13000) of the Unemployment Insurance~~
38 ~~Code.~~

39 ~~(6) “Annual full-time equivalent” means either of the following:~~

~~(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.~~

~~(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.~~

~~(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:~~

~~(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B):~~

~~(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.~~

~~(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.~~

~~(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.~~

~~(d) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding seven years if necessary, until the credit is exhausted.~~

~~(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.~~

~~(f) For purposes of this section:~~

~~(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.~~

~~(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.~~

~~(g) (1) (A) Credit under this section and Section 17053.80 shall be allowed only for credits claimed on timely filed original returns~~

1 received by the Franchise Tax Board on or before the cut-off date
2 established by the Franchise Tax Board.

3 (B) For purposes of this paragraph, the cut-off date shall be the
4 last day of the calendar quarter within which the Franchise Tax
5 Board estimates it will have received timely filed original returns
6 claiming credits under this section and Section 17053.80 that
7 cumulatively total four hundred million dollars (\$400,000,000)
8 for all taxable years.

9 (2) The date a return is received shall be determined by the
10 Franchise Tax Board.

11 (3) (A) The determinations of the Franchise Tax Board with
12 respect to the cut-off date, the date a return is received, and whether
13 a return has been timely filed for purposes of this subdivision may
14 not be reviewed in any administrative or judicial proceeding.

15 (B) Any disallowance of a credit claimed due to a determination
16 under this subdivision, including the application of the limitation
17 specified in paragraph (1), shall be treated as a mathematical error
18 appearing on the return. Any amount of tax resulting from such
19 disallowance may be assessed by the Franchise Tax Board in the
20 same manner as provided by Section 19051.

21 (4) The Franchise Tax Board shall periodically provide notice
22 on its Web site with respect to the amount of credit under this
23 section and Section 17053.80 claimed on timely filed original
24 returns received by the Franchise Tax Board.

25 (h) (1) The Franchise Tax Board may prescribe rules, guidelines
26 or procedures necessary or appropriate to carry out the purposes
27 of this section, including any guidelines regarding the limitation
28 on total credits allowable under this section and Section 17053.80
29 and guidelines necessary to avoid the application of paragraph (2)
30 of subdivision (f) through split-ups, shell corporations, partnerships,
31 tiered ownership structures, or otherwise.

32 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
33 Division 3 of Title 2 of the Government Code does not apply to
34 any standard, criterion, procedure, determination, rule, notice, or
35 guideline established or issued by the Franchise Tax Board
36 pursuant to this section.

37 (i) This section shall remain in effect only until December 1 of
38 the calendar year after the year of the cut-off date, and as of that
39 December 1 is repealed.

1 *SEC. 16. Section 23623 of the Revenue and Taxation Code, as*
2 *added by Section 8 of Chapter 17 of the Third Extraordinary*
3 *Session of the Statutes of 2009, is amended to read:*

4 23623. (a) (1) For each taxable year beginning on or after
5 January 1, 2009, and before January 1, 2011, there shall be allowed
6 as a credit against the “tax,” as defined in Section 23036, three
7 thousand dollars (\$3,000) for each net increase in qualified
8 full-time employees, as specified in subdivision (c), hired during
9 the taxable year by a qualified employer.

10 (2) For each taxable year beginning on or after January 1,
11 2011, and before January 1, 2013, there shall be allowed as a
12 credit against the “tax,” as defined in Section 23036, four thousand
13 dollars (\$4,000) for each net increase in qualified full-time
14 employees, as specified in subdivision (c), hired during the taxable
15 year by a qualified employer.

16 (b) For purposes of this section:

17 (1) “Acquired” includes any gift, inheritance, transfer incident
18 to divorce, or any other transfer, whether or not for consideration.

19 (2) “Qualified full-time employee” means:

20 (A) A qualified employee who was paid qualified wages during
21 the taxable year by the qualified employer for services of not less
22 than an average of 35 hours per week.

23 (B) A qualified employee who was a salaried employee and
24 was paid compensation during the taxable year for full-time
25 employment, within the meaning of Section 515 of the Labor Code,
26 by the qualified employer.

27 (3) ~~A~~(A) For taxable years beginning on or after January 1,
28 2009, and before January 1, 2011, a “qualified employee” shall
29 not include any of the following:

30 ~~(A)~~

31 (i) An employee certified as a qualified employee in an
32 enterprise zone designated in accordance with Chapter 12.8
33 (commencing with Section 7070) of Division 7 of Title 1 of the
34 Government Code.

35 ~~(B)~~

36 (ii) An employee certified as a qualified disadvantaged
37 individual in a manufacturing enhancement area designated in
38 accordance with Section 7073.8 of the Government Code.

39 ~~(C)~~

1 (iii) An employee certified as a qualified employee in a targeted
2 tax area designated in accordance with Section 7097 of the
3 Government Code.

4 ~~(D)~~

5 (iv) An employee certified as a qualified disadvantaged
6 individual or a qualified displaced employee in a local agency
7 military base recovery area (LAMBRA) designated in accordance
8 with Chapter 12.97 (commencing with Section 7105) of Division
9 7 of Title 1 of the Government Code.

10 ~~(E)~~

11 (v) An employee whose wages are included in calculating any
12 other credit allowed under this part.

13 (B) *For taxable years beginning on or after January 1, 2011,*
14 *and before January 1, 2013, a “qualified employee” shall not*
15 *include any employee whose wages or hours are included, directly*
16 *or indirectly, in calculating any other credit allowed under this*
17 *part.*

18 ~~(4) “Qualified—~~(A) *For taxable years beginning on or after*
19 *January 1, 2009, and before January 1, 2011, a “qualified*
20 *employer” means a taxpayer that, as of the last day of the preceding*
21 *taxable year, employed a total of 20 or fewer employees.*

22 (B) *For taxable years beginning on or after January 1, 2011,*
23 *and before January 1, 2013, a “qualified employer” means a*
24 *taxpayer that, as of the last day of the preceding taxable year,*
25 *employed a total of 50 or fewer employees.*

26 (5) “Qualified wages” means wages subject to Division 6
27 (commencing with Section 13000) of the Unemployment Insurance
28 Code.

29 (6) “Annual full-time equivalent” means either of the following:

30 (A) In the case of a full-time employee paid hourly qualified
31 wages, “annual full-time equivalent” means the total number of
32 hours worked for the taxpayer by the employee (not to exceed
33 2,000 hours per employee) divided by 2,000.

34 (B) In the case of a salaried full-time employee, “annual
35 full-time equivalent” means the total number of weeks worked for
36 the taxpayer by the employee divided by 52.

37 (c) The net increase in qualified full-time employees of a
38 qualified employer shall be determined as provided by this
39 subdivision:

1 (1) (A) The net increase in qualified full-time employees shall
2 be determined on an annual full-time equivalent basis by
3 subtracting from the amount determined in subparagraph (C) the
4 amount determined in subparagraph (B).

5 (B) The total number of qualified full-time employees employed
6 in the preceding taxable year by the taxpayer and by any trade or
7 business acquired by the taxpayer during the current taxable year.

8 (C) The total number of full-time employees employed in the
9 current taxable year by the taxpayer and by any trade or business
10 acquired during the current taxable year.

11 (2) For taxpayers ~~who~~ *that* first commence doing business in
12 this state during the taxable year, the number of full-time
13 employees for the immediately preceding prior taxable year shall
14 be zero.

15 (d) In the case where the credit allowed by this section exceeds
16 the “tax,” the excess may be carried over to reduce the “tax” in
17 the following year, and *the* succeeding seven years if necessary,
18 until the credit is exhausted.

19 (e) Any deduction otherwise allowed under this part for qualified
20 wages shall not be reduced by the amount of the credit allowed
21 under this section.

22 (f) For purposes of this section:

23 (1) All employees of the trades or businesses that are treated as
24 related under either Section 267, 318, or 707 of the Internal
25 Revenue Code shall be treated as employed by a single taxpayer.

26 (2) In determining whether the taxpayer has first commenced
27 doing business in this state during the taxable year, the provisions
28 of subdivision ~~(f)~~ (g) of Section ~~17276~~ 24416.20, without
29 application of paragraph (7) of that subdivision, shall apply.

30 (g) (1) (A) Credit under this section ~~and Section 17053.80~~ shall
31 be allowed only for credits claimed on *a* timely filed original
32 ~~returns~~ *return* received by the Franchise Tax Board on or before
33 the cut-off date established by the Franchise Tax Board, *or*
34 *December 31, 2013, whichever occurs earlier.*

35 (B) For purposes of this paragraph, the cut-off date shall be the
36 last day of the calendar quarter within which the Franchise Tax
37 Board estimates it will have received timely filed original returns
38 claiming credits under this section and Section 17053.80 that
39 cumulatively total four hundred million dollars (\$400,000,000)
40 for all taxable years.

1 (2) The date a return is received shall be determined by the
2 Franchise Tax Board.

3 (3) (A) The determinations of the Franchise Tax Board with
4 respect to the cut-off date, the date a return is received, and whether
5 a return has been timely filed for purposes of this subdivision may
6 not be reviewed in any administrative or judicial proceeding.

7 (B) Any disallowance of a credit claimed due to a determination
8 under this subdivision, including the application of the limitation
9 specified in *subparagraph (B)* of paragraph (1), shall be treated as
10 a mathematical error appearing on the return. Any amount of tax
11 resulting from such disallowance may be assessed by the Franchise
12 Tax Board in the same manner as provided by Section 19051.

13 (4) The Franchise Tax Board shall periodically provide notice
14 on its *Internet* Web site with respect to the amount of credit under
15 this section and Section 17053.80 claimed on timely filed original
16 returns received by the Franchise Tax Board.

17 (h) (1) The Franchise Tax Board may prescribe rules,
18 guidelines, or procedures necessary or appropriate to carry out the
19 purposes of this section, including any guidelines, regarding the
20 limitation on total credits allowable under this section and Section
21 17053.80 and guidelines necessary to avoid the application of
22 paragraph (2) of subdivision (f) through ~~split-ups~~, shell
23 corporations, partnerships, tiered ownership structures, or
24 otherwise.

25 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
26 Division 3 of Title 2 of the Government Code does not apply to
27 any standard, criterion, procedure, determination, rule, notice, or
28 guideline established or issued by the Franchise Tax Board
29 pursuant to this section.

30 (i) This section shall remain in effect only until December 1 of
31 the calendar year after the year of the cut-off date, and as of that
32 December 1, *or December 31, 2013, whichever occurs earlier*, is
33 repealed.

34 *SEC. 17. Section 23633 of the Revenue and Taxation Code is*
35 *amended to read:*

36 23633. (a) For each taxable year beginning on or after January
37 1, 1998, there shall be allowed as a credit against the “tax” (as
38 “tax, as defined by Section ~~23036~~ 23036, for the taxable year an
39 amount equal to the sales or use tax paid or incurred during the

1 taxable year by the qualified taxpayer in connection with the
2 qualified taxpayer's purchase of qualified property.

3 (b) For purposes of this section:

4 (1) "Qualified property" means property that meets all of the
5 following requirements:

6 (A) Is any of the following:

7 (i) Machinery and machinery parts used for fabricating,
8 processing, assembling, and manufacturing.

9 (ii) Machinery and machinery parts used for the production of
10 renewable energy resources.

11 (iii) Machinery and machinery parts used for either of the
12 following:

13 (I) Air pollution control mechanisms.

14 (II) Water pollution control mechanisms.

15 (iv) Data-processing and communications equipment, such as
16 computers, computer-automated drafting systems, copy machines,
17 telephone systems, and faxes.

18 (v) Motion picture manufacturing equipment central to
19 production and post production, such as cameras, audio recorders,
20 and digital image and sound processing equipment.

21 (B) The total cost of qualified property purchased and placed
22 in service in any taxable year that may be taken into account by
23 any qualified taxpayer for purposes of claiming this credit shall
24 not exceed twenty million dollars (\$20,000,000).

25 (C) The qualified property is used by the qualified taxpayer
26 exclusively in a targeted tax area.

27 (D) The qualified property is purchased and placed in service
28 before the date the targeted tax area designation expires, is revoked,
29 is no longer binding, or becomes inoperative.

30 (2) (A) "Qualified taxpayer" means a corporation that meets
31 both of the following:

32 (i) Is engaged in a trade or business within a targeted tax area
33 designated pursuant to Chapter 12.93 (commencing with Section
34 7097) of Division 7 of Title 1 of the Government Code.

35 (ii) Is engaged in those lines of business described in Codes
36 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299,
37 inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive,
38 of the Standard Industrial Classification (SIC) Manual published
39 by the United States Office of Management and Budget, 1987
40 edition.

(B) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.33 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term “pass-through entity” means any partnership or S corporation.

(3) “Targeted tax area” means the area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(c) If the qualified taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(d) If the qualified taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(e) (1) In the case where the credit otherwise allowed under this section exceeds the “tax” for the taxable year, that portion of the credit that exceeds the “tax” may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(2) *Notwithstanding paragraph (1), for taxable years beginning on or after January 1, 2011:*

(A) *In the case of any portion of a credit available for carryover and attributable to a taxable year beginning before January 1, 2006, that portion shall not be carried forward.*

(B) *In the case of credits first allowed in taxable years beginning on or after January 1, 2006, the carryover period shall be five years from the year for which the credit was first allowed.*

(f) Any qualified taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the qualified taxpayer’s purchase of qualified property.

(g) (1) The amount of credit otherwise allowed under this section and Section 23634, including any credit carryover from

1 prior years, that may reduce the “tax” for the taxable year shall
2 not exceed the amount of tax that would be imposed on the
3 qualified taxpayer’s business income attributable to the targeted
4 tax area determined as if that attributable income represented all
5 of the income of the qualified taxpayer subject to tax under this
6 part.

7 (2) Attributable income shall be that portion of the taxpayer’s
8 California source business income that is apportioned to the
9 targeted tax area. For that purpose, the taxpayer’s business income
10 attributable to sources in this state first shall be determined in
11 accordance with Chapter 17 (commencing with Section 25101).
12 That business income shall be further apportioned to the targeted
13 tax area in accordance with Article 2 (commencing with Section
14 25120) of Chapter 17, modified for purposes of this section in
15 accordance with paragraph (3).

16 (3) Business income shall be apportioned to the targeted tax
17 area by multiplying the total California business income of the
18 taxpayer by a fraction, the numerator of which is the property
19 factor plus the payroll factor, and the denominator of which is two.
20 For purposes of this paragraph:

21 (A) The property factor is a fraction, the numerator of which is
22 the average value of the taxpayer’s real and tangible personal
23 property owned or rented and used in the targeted tax area during
24 the taxable year and the denominator of which is the average value
25 of all the taxpayer’s real and tangible personal property owned or
26 rented and used in this state during the taxable year.

27 (B) The payroll factor is a fraction, the numerator of which is
28 the total amount paid by the taxpayer in the targeted tax area during
29 the taxable year for compensation, and the denominator of which
30 is the total compensation paid by the taxpayer in this state during
31 the taxable year.

32 (4) The portion of any credit remaining, if any, after application
33 of this subdivision, shall be carried over to succeeding taxable
34 years, as if it were an amount exceeding the “tax” for the taxable
35 year, as provided in subdivision (e).

36 (5) In the event that a credit carryover is allowable under
37 subdivision (e) for any taxable year after the targeted tax area
38 designation has expired, has been revoked, is no longer binding,
39 or has become inoperative, the targeted tax area shall be deemed

1 to remain in existence for purposes of computing the limitation
2 specified in this subdivision.

3 (h) The changes made to this section by the act adding this
4 subdivision shall apply to taxable years beginning on or after
5 January 1, 1998.

6 (i) *For taxable years beginning on or after January 1, 2011,*
7 *the credit allowed by this section must be claimed on a timely filed*
8 *original return of the taxpayer.*

9 *SEC. 18. Section 23634 of the Revenue and Taxation Code is*
10 *amended to read:*

11 23634. (a) (1) For each taxable year beginning on or after
12 January 1, 1998, there shall be allowed a credit against the “tax”
13 ~~(as “tax,” as defined by Section 23036)~~ 23036, to a qualified
14 taxpayer who employs a qualified employee in a targeted tax area
15 during the taxable year. ~~The~~ *For qualified employees who first*
16 *commenced employment in taxable years beginning on or after*
17 *January 1, 1998, and before January 1, 2011, the credit shall be*
18 *equal to the sum of each of the following:*

19 ~~(1)~~

20 (A) Fifty percent of qualified wages in the first year of
21 employment.

22 ~~(2)~~

23 (B) Forty percent of qualified wages in the second year of
24 employment.

25 ~~(3)~~

26 (C) Thirty percent of qualified wages in the third year of
27 employment.

28 ~~(4)~~

29 (D) Twenty percent of qualified wages in the fourth year of
30 employment.

31 ~~(5)~~

32 (E) Ten percent of qualified wages in the fifth year of
33 employment.

34 (2) *For qualified employees who first commence employment*
35 *in a taxable year beginning on or after January 1, 2011, the credit*
36 *shall be equal to five thousand dollars (\$5,000) for each net*
37 *increase in qualified full-time employees, as specified in*
38 *subdivision (c), employed during the taxable year by a qualified*
39 *taxpayer.*

40 (b) For purposes of this section:

1 (1) ~~“Qualified”~~ *For taxable years beginning on or after January*
2 *1, 1998, and before January 1, 2011, “qualified wages” means:*

3 (A) That portion of wages paid or incurred by the qualified
4 taxpayer during the taxable year to qualified employees that does
5 not exceed 150 percent of the minimum wage.

6 (B) Wages received during the 60-month period beginning with
7 the first day the employee commences employment with the
8 qualified taxpayer. Reemployment in connection with any increase,
9 including a regularly occurring seasonal increase, in the trade or
10 business operations of the qualified taxpayer does not constitute
11 commencement of employment for purposes of this section.

12 (C) Qualified wages do not include any wages paid or incurred
13 by the qualified taxpayer on or after the targeted tax area expiration
14 date. However, wages paid or incurred with respect to qualified
15 employees who are employed by the qualified taxpayer within the
16 targeted tax area within the 60-month period prior to the targeted
17 tax area expiration date shall continue to qualify for the credit
18 under this section after the targeted tax area expiration date, in
19 accordance with all provisions of this section applied as if the
20 targeted tax area designation were still in existence and binding.

21 (2) *“Acquired” includes any gift, inheritance, transfer incident*
22 *to divorce, or any other transfer, whether or not for consideration.*

23 ~~(2)~~
24 (3) “Minimum wage” means the wage established by the
25 Industrial Welfare Commission as provided for in Chapter 1
26 (commencing with Section 1171) of Part 4 of Division 2 of the
27 Labor Code.

28 ~~(3)~~
29 (4) “Targeted tax area expiration date” means the date the
30 targeted tax area designation expires, is revoked, is no longer
31 binding, or becomes inoperative.

32 ~~(4)~~
33 (5) (A) “Qualified employee” means an individual who meets
34 all of the following requirements:

35 (i) At least 90 percent of his or her services for the qualified
36 taxpayer during the taxable year are directly related to the conduct
37 of the qualified taxpayer’s trade or business located in a targeted
38 tax area.

39 (ii) Performs at least 50 percent of his or her services for the
40 qualified taxpayer during the taxable year in a targeted tax area.

1 (iii) Is hired by the qualified taxpayer after the date of original
2 designation of the area in which services were performed as a
3 targeted tax area.

4 (iv) ~~Is~~ *For an individual who first commenced employment with*
5 *the qualified taxpayer in taxable years beginning on or after*
6 *January 1, 1998, and before January 1, 2011, he or she is any of*
7 *the following:*

8 (I) Immediately preceding the qualified employee's
9 commencement of employment with the qualified taxpayer, was
10 a person eligible for services under the federal Job Training
11 Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor,
12 who is receiving, or is eligible to receive, subsidized employment,
13 training, or services funded by the federal Job Training Partnership
14 Act, or its successor.

15 (II) Immediately preceding the qualified employee's
16 commencement of employment with the qualified taxpayer, was
17 a person eligible to be a voluntary or mandatory registrant under
18 the Greater Avenues for Independence Act of 1985 (GAIN)
19 provided for pursuant to Article 3.2 (commencing with Section
20 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and
21 Institutions Code, or its successor.

22 (III) Immediately preceding the qualified employee's
23 commencement of employment with the qualified taxpayer, was
24 an economically disadvantaged individual 14 years of age or older.

25 (IV) Immediately preceding the qualified employee's
26 commencement of employment with the qualified taxpayer, was
27 a dislocated worker who meets any of the following:

28 ~~(aa)~~

29 *(ia)* Has been terminated or laid off or who has received a notice
30 of termination or layoff from employment, is eligible for or has
31 exhausted entitlement to unemployment insurance benefits, and
32 is unlikely to return to his or her previous industry or occupation.

33 ~~(bb)~~

34 *(ib)* Has been terminated or has received a notice of termination
35 of employment as a result of any permanent closure or any
36 substantial layoff at a plant, facility, or enterprise, including an
37 individual who has not received written notification but whose
38 employer has made a public announcement of the closure or layoff.

39 ~~(ee)~~

1 ~~(ic)~~ Is long-term unemployed and has limited opportunities for
2 employment or reemployment in the same or a similar occupation
3 in the area in which the individual resides, including an individual
4 55 years of age or older who may have substantial barriers to
5 employment by reason of age.

6 ~~(dd)~~

7 ~~(id)~~ Was self-employed (including farmers and ranchers) and
8 is unemployed as a result of general economic conditions in the
9 community in which he or she resides or because of natural
10 disasters.

11 ~~(ee)~~

12 ~~(ie)~~ Was a civilian employee of the Department of Defense
13 employed at a military installation being closed or realigned under
14 the Defense Base Closure and Realignment Act of 1990.

15 ~~(ff)~~

16 ~~(if)~~ Was an active member of the Armed Forces or National
17 Guard as of September 30, 1990, and was either involuntarily
18 separated or separated pursuant to a special benefits program.

19 ~~(gg)~~

20 ~~(ig)~~ Is a seasonal or migrant worker who experiences chronic
21 seasonal unemployment and underemployment in the agriculture
22 industry, aggravated by continual advancements in technology and
23 mechanization.

24 ~~(hh)~~

25 ~~(ih)~~ Has been terminated or laid off, or has received a notice of
26 termination or layoff, as a consequence of compliance with the
27 Clean Air Act.

28 (V) Immediately preceding the qualified employee's
29 commencement of employment with the qualified taxpayer, was
30 a disabled individual who is eligible for or enrolled in, or has
31 completed a state rehabilitation plan or is a service-connected
32 disabled veteran, veteran of the Vietnam era, or veteran who is
33 recently separated from military service.

34 (VI) Immediately preceding the qualified employee's
35 commencement of employment with the qualified taxpayer, was
36 an ex-offender. An individual shall be treated as convicted if he
37 or she was placed on probation by a state court without a finding
38 of guilt.

1 (VII) Immediately preceding the qualified employee's
2 commencement of employment with the qualified taxpayer, was
3 a person eligible for or a recipient of any of the following:

4 ~~(aa)~~

5 (ia) Federal Supplemental Security Income benefits.

6 ~~(bb)~~

7 (ib) Aid to Families with Dependent Children.

8 ~~(ee)~~

9 (ic) Food stamps.

10 ~~(dd)~~

11 (id) State and local general assistance.

12 (VIII) Immediately preceding the qualified employee's
13 commencement of employment with the qualified taxpayer, was
14 a member of a federally recognized Indian tribe, band, or other
15 group of Native American descent.

16 (IX) Immediately preceding the qualified employee's
17 commencement of employment with the qualified taxpayer, was
18 a resident of a targeted tax area.

19 (X) Immediately preceding the qualified employee's
20 commencement of employment with the taxpayer, was a member
21 of a targeted group, as defined in Section 51(d) of the Internal
22 Revenue Code, or its successor.

23 (B) Priority for employment shall be provided to an individual
24 who is enrolled in a qualified program under the federal Job
25 Training Partnership Act or the Greater Avenues for Independence
26 Act of 1985 or who is eligible as a member of a targeted group
27 under the Work Opportunity Tax Credit (Section 51 of the Internal
28 Revenue Code), or its successor.

29 (v) *For a qualified employee who first commences employment*
30 *in taxable years beginning on or after January 1, 2011, that*
31 *individual is a "qualified full-time employee" if, in addition to any*
32 *other requirement imposed by this section, he or she was either:*

33 (I) *Paid wages by the qualified taxpayer for services of not less*
34 *than an average of 35 hours per week.*

35 (II) *A salaried employee and is paid compensation during the*
36 *taxable year for full-time employment, within the meaning of*
37 *Section 515 of the Labor Code, by the qualified taxpayer.*

38 ~~(5)~~

39 (6) (A) "Qualified taxpayer" means a person or entity that meets
40 both of the following:

1 (i) Is engaged in a trade or business within a targeted tax area
2 designated pursuant to Chapter 12.93 (commencing with Section
3 7097) of Division 7 of Title 1 of the Government Code.

4 (ii) Is engaged in those lines of business described in Codes
5 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299,
6 inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive,
7 of the Standard Industrial Classification (SIC) Manual published
8 by the United States Office of Management and Budget, 1987
9 edition.

10 (B) In the case of any passthrough entity, the determination of
11 whether a taxpayer is a qualified taxpayer under this section shall
12 be made at the entity level and any credit under this section or
13 Section 17053.34 shall be allowed to the passthrough entity and
14 passed through to the partners or shareholders in accordance with
15 applicable provisions of this part or Part 10 (commencing with
16 Section 17001). For purposes of this subparagraph, the term
17 “passthrough entity” means any partnership or S corporation.

18 (C) (i) *Notwithstanding subparagraph (A), a “qualified*
19 *taxpayer” shall not include any person or entity described in*
20 *subparagraph (A) that first commences business activity in a*
21 *targeted tax area during the taxable year and has, within 24 months*
22 *before the taxpayer first commenced business activity in the*
23 *targeted tax area, had an overall reduction in the number of*
24 *employees employed by the taxpayer within the state outside of*
25 *the targeted tax area, unless that person or entity has made a*
26 *written offer of employment to each of the employees employed at*
27 *the location within the state where employment was reduced for*
28 *such employees to continue their employment with that person or*
29 *entity within the targeted tax area.*

30 (ii) *The written offer referred to in this subparagraph shall be*
31 *made prior to the termination of employment at the location within*
32 *the state that is outside the targeted tax area.*

33 (iii) *If any employee described in clause (i) does not timely*
34 *receive a written offer, the person or entity shall not be a qualified*
35 *taxpayer for that taxable year, even if other employees do receive*
36 *a written offer.*

37 (iv) *A person or entity may be required to provide, upon request*
38 *of the Franchise Tax Board, written certification, under penalty*
39 *of perjury, that the requirements of this subparagraph were met.*

(v) All employees of the trades or businesses that are treated as related under Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single qualified taxpayer.

(vi) In determining whether the qualified taxpayer has first commenced doing business in the targeted tax area during the taxable year, the provisions of subdivision (g) of Section 24416.20, without application of paragraph (7) of that subdivision, shall apply.

~~(6)~~

(7) “Seasonal employment” means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(8) “Annual full-time equivalent” means either of the following:

(A) In the case of a full-time employee paid hourly wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.

(c) Except as provided in paragraph (2), the net increase in qualified full-time employees of a qualified taxpayer shall be determined by paragraph (1):

(1) (A) (i) If the state’s average nonfarm employment, as determined by the Franchise Tax Board based upon information published by the Employment Development Department as of March 15 of each calendar year, has not decreased for the calendar years beginning on the third and the second January 1 immediately preceding the beginning of the current taxable year, as compared with the second and the first calendar years respectively, then the net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis based on the amount of the increase of qualified full-time equivalent employees in excess of the greatest of the number of qualified full-time equivalent employees employed by the qualified taxpayer in any of the three immediately preceding taxable years, as determined under subparagraph (B).

(ii) The amount determined under clause (i) shall include the fractional amount, if any, of the increase for the taxable year.

1 (B) The net increase in qualified full-time employees for the
2 current taxable year shall be determined by subtracting the amount
3 determined under clause (ii) from the amount determined under
4 clause (i). If the amount determined under clause (ii) is equal to
5 or exceeds the amount determined under clause (i), the amount
6 determined under this subparagraph shall be zero.

7 (i) (I) The total number of qualified full-time employees
8 employed in the current taxable year by the qualified taxpayer and
9 by any trade or business acquired by the qualified taxpayer during
10 the current taxable year.

11 (II) The greatest total number of qualified full-time employees
12 employed in any of the three preceding taxable years by the
13 qualified taxpayer and by any trade or business acquired by the
14 qualified taxpayer during the current taxable year.

15 (ii) The increase in the total number of full-time employees
16 (determined under the full-time equivalent rules of paragraph (8)
17 of subdivision (b)) employed by the qualified taxpayer in this state
18 shall be determined by subtracting the amount determined under
19 subclause (II) from the amount determined under subclause (I). If
20 the amount determined under subclause (II) is equal to or exceeds
21 the amount determined under subclause (I), the amount determined
22 under this clause shall be zero.

23 (I) The total number of full-time employees employed in this
24 state in the current taxable year by the qualified taxpayer and by
25 any trade or business acquired by the qualified taxpayer during
26 the current taxable year.

27 (II) The greatest total number of full-time employees of the
28 qualified taxpayer employed in this state in any of the three
29 preceding taxable years by the qualified taxpayer and by any trade
30 or business acquired by the qualified taxpayer during the current
31 taxable year.

32 (2) (A) (i) If there is a decrease in the state's nonfarm
33 employment, as determined by the Franchise Tax Board based
34 upon information published by the Employment Development
35 Department as of March 15 of each calendar year, for the calendar
36 years beginning on the third and the second January 1 immediately
37 preceding the current taxable year, the net increase in qualified
38 full-time employees shall be determined on an annual full-time
39 equivalent basis as the lesser of the amount determined under

1 subparagraph (C) or the amount determined under subparagraph
2 (B).

3 (ii) The amount determined under clause (i) shall include the
4 fractional amount, if any, of the increase for the taxable year.

5 (B) The increase in the total number of qualified full-time
6 employees shall be determined by subtracting the amount
7 determined under clause (ii) from the amount determined under
8 clause (i). If the amount determined under clause (ii) is equal to
9 or exceeds the amount determined under clause (i), the amount
10 determined under this subparagraph shall be zero.

11 (i) The total number of qualified full-time employees employed
12 in the current taxable year by the qualified taxpayer and by any
13 trade or business acquired by the qualified taxpayer during the
14 current taxable year.

15 (ii) The total number of qualified full-time employees employed
16 in the preceding taxable year by the qualified taxpayer and by any
17 trade or business acquired by the qualified taxpayer during the
18 current taxable year.

19 (C) The increase in the total number of full-time employees
20 (determined under the full-time equivalent rules of paragraph (8)
21 of subdivision (b)) employed by the qualified taxpayer in this state
22 shall be determined by subtracting the amount determined under
23 clause (ii) from the amount determined under clause (i). If the
24 amount determined under clause (ii) is equal to or exceeds the
25 amount determined under clause (i), the amount determined under
26 this subparagraph shall be zero.

27 (i) The total number of full-time employees employed in this
28 state in the current taxable year by the qualified taxpayer and by
29 any trade or business acquired by the qualified taxpayer during
30 the current taxable year.

31 (ii) The total number of full-time employees of the qualified
32 taxpayer employed in this state in the preceding taxable year by
33 the qualified taxpayer and by any trade or business acquired by
34 the qualified taxpayer during the current taxable year.

35 (3) For qualified taxpayers who first commence doing business
36 in this state during the taxable year, the number of qualified
37 full-time employees under subparagraph (B) of paragraph (1) and
38 the number of full-time employees under subparagraph (C) of
39 paragraph (2) for the preceding taxable year shall be zero.

(4) For purposes of determining the number of full-time employees of the qualified taxpayer who are employed in this state under paragraphs (1) and (2), only those employees who receive wages that are subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code from the qualified taxpayer comprising more than 50 percent of that employee's total wages received from the qualified taxpayer for the taxable year, shall be included.

(5) For purposes of determining the increase in the number of qualified full-time employees of a qualified taxpayer under this section and Sections 23622.7, 23622.8, and 23646, the increase shall be determined separately for the targeted tax area, and each enterprise zone, manufacturing enhancement area, or local agency military base recovery area with respect to which a taxpayer is a qualified taxpayer.

(6) Any determination of the Franchise Tax Board under this subdivision with respect to whether there is an increase, a decrease, or no change in the state's nonfarm employment for any calendar year shall be final and may not be reviewed in any administrative or judicial proceeding, even if the data published by the Employment Development Department as of March 15 of any calendar year upon which the Franchise Tax Board relied in making its determination is substantially revised and would otherwise change which formula is applicable under this subdivision.

(e)

(d) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

~~(d) The~~

(e) For qualified employees who first commenced employment with a qualified taxpayer in taxable years beginning on or after January 1, 1998, and before January 1, 2011, the qualified taxpayer shall do both of the following:

(1) Obtain from the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office or social services agency, or the local government administering the targeted tax area, a certification that provides that a qualified employee meets the eligibility requirements specified in clause

(iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Department of Housing and Community Development shall develop regulations for the issuance of certificates pursuant to subdivision (g) of Section 7097 of the Government Code, and shall develop forms for this purpose.

(2) For any qualified employee who first commenced employment in taxable years beginning on or after January 1, 1998, and before January 1, 2011, for which, as of the date the qualified employee first commenced employment, a certification described in paragraph (1) has not been obtained and a request for certification described in paragraph (1) has not been previously submitted, then a request for certification described in paragraph (1) with respect to that employee shall be submitted to the certifying entity no later than the date that is the later of 90 days after July 1, 2011, or 30 days after the date the qualified employee first commenced employment. A credit shall be allowed under this section with respect to a qualified employee described in the preceding sentence only if a request for certification was timely submitted in accordance with this paragraph.

~~(2)~~

(3) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

~~(e)~~

(f) (1) For purposes of this section:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, “controlled group of corporations” means “controlled group of corporations” as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) “More than 50 percent” shall be substituted for “at least 80 percent” each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the “predecessor”) or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

~~(f)~~

(g) (1) (A) ~~If~~ *For qualified employees who first commenced employment with a qualified taxpayer in taxable years beginning on or after January 1, 1998, and before January 1, 2011, if the employment, other than seasonal employment, of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.*

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the qualified taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified employee.

1 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
2 any of the following:

3 (i) A termination of employment of a qualified employee who
4 voluntarily leaves the employment of the qualified taxpayer.

5 (ii) A termination of employment of a qualified employee who,
6 before the close of the period referred to in subparagraph (A) of
7 paragraph (1), becomes disabled and unable to perform the services
8 of that employment, unless that disability is removed before the
9 close of that period and the qualified taxpayer fails to offer
10 reemployment to that employee.

11 (iii) A termination of employment of a qualified employee, if
12 it is determined that the termination was due to the misconduct (as
13 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
14 the California Code of Regulations) of that employee.

15 (iv) A termination of employment of a qualified employee due
16 to a substantial reduction in the trade or business operations of the
17 taxpayer.

18 (v) A termination of employment of a qualified employee, if
19 that employee is replaced by other qualified employees so as to
20 create a net increase in both the number of employees and the
21 hours of employment.

22 (B) Subparagraph (B) of paragraph (1) shall not apply to any
23 of the following:

24 (i) A failure to continue the seasonal employment of a qualified
25 employee who voluntarily fails to return to the seasonal
26 employment of the qualified taxpayer.

27 (ii) A failure to continue the seasonal employment of a qualified
28 employee who, before the close of the period referred to in
29 subparagraph (B) of paragraph (1), becomes disabled and unable
30 to perform the services of that seasonal employment, unless that
31 disability is removed before the close of that period and the
32 qualified taxpayer fails to offer seasonal employment to that
33 qualified employee.

34 (iii) A failure to continue the seasonal employment of a qualified
35 employee, if it is determined that the failure to continue the
36 seasonal employment was due to the misconduct (as defined in
37 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
38 Code of Regulations) of that qualified employee.

1 (iv) A failure to continue seasonal employment of a qualified
2 employee due to a substantial reduction in the regular seasonal
3 trade or business operations of the qualified taxpayer.

4 (v) A failure to continue the seasonal employment of a qualified
5 employee, if that qualified employee is replaced by other qualified
6 employees so as to create a net increase in both the number of
7 seasonal employees and the hours of seasonal employment.

8 (C) For purposes of paragraph (1), the employment relationship
9 between the qualified taxpayer and a qualified employee shall not
10 be treated as terminated by either of the following:

11 (i) By a transaction to which Section 381(a) of the Internal
12 Revenue Code applies, if the qualified employee continues to be
13 employed by the acquiring corporation.

14 (ii) By reason of a mere change in the form of conducting the
15 trade or business of the qualified taxpayer, if the qualified
16 employee continues to be employed in that trade or business and
17 the qualified taxpayer retains a substantial interest in that trade or
18 business.

19 (3) Any increase in tax under paragraph (1) shall not be treated
20 as tax imposed by this part for purposes of determining the amount
21 of any credit allowable under this part.

22 ~~(g)~~

23 (h) Rules similar to the rules provided in Sections 46(e) and (h)
24 of the Internal Revenue Code shall apply to both of the following:

25 (1) An organization to which Section 593 of the Internal
26 Revenue Code applies.

27 (2) A regulated investment company or a real estate investment
28 trust subject to taxation under this part.

29 ~~(h)~~

30 (i) For purposes of this section, “targeted tax area” means an
31 area designated pursuant to Chapter 12.93 (commencing with
32 Section 7097) of Division 7 of Title 1 of the Government Code.

33 ~~(i)~~

34 (j) (1) In the case where the credit otherwise allowed under this
35 section exceeds the “tax” for the taxable year, that portion of the
36 credit that exceeds the “tax” may be carried over and added to the
37 credit, if any, in succeeding taxable years, until the credit is
38 exhausted. The credit shall be applied first to the earliest taxable
39 years possible.

(2) *Notwithstanding paragraph (1), for taxable years beginning on or after January 1, 2011:*

(A) *In the case of any portion of a credit available for carryover and attributable to a taxable year beginning before January 1, 2006, that portion shall not be carried forward.*

(B) *In the case of credits first allowed in taxable years beginning on or after January 1, 2006, the carryover period shall be five years from the year for which the credit was first allowed.*

(j)

(k) (1) The amount of the credit otherwise allowed under this section and Section 23633, including any credit carryover from prior years, that may reduce the “tax” for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer’s business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer’s California source business income that is apportioned to the targeted tax area. For that purpose, the taxpayer’s business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the targeted tax area in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the targeted tax area by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer’s real and tangible personal property owned or rented and used in the targeted tax area during the taxable year, and the denominator of which is the average value of all the taxpayer’s real and tangible personal property owned or rented and used in this state during the taxable year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the targeted tax area during the taxable year for compensation, and the denominator of which

1 is the total compensation paid by the taxpayer in this state during
2 the taxable year.

3 (4) The portion of any credit remaining, if any, after application
4 of this subdivision, shall be carried over to succeeding taxable
5 years, as if it were an amount exceeding the “tax” for the taxable
6 year, as provided in subdivision-~~(h)~~ (j).

7 (5) In the event that a credit carryover is allowable under
8 subdivision-~~(h)~~ (j) for any taxable year after the targeted tax area
9 designation has expired or been revoked, the targeted tax area shall
10 be deemed to remain in existence for purposes of computing the
11 limitation specified in this subdivision.

12 (l) *For taxable years beginning on or after January 1, 2011,*
13 *the credit allowed by this section must be claimed on a timely filed*
14 *original return of the qualified taxpayer.*

15 *SEC. 19. Section 23645 of the Revenue and Taxation Code is*
16 *amended to read:*

17 23645. (a) For each taxable year beginning on or after January
18 1, 1995, there shall be allowed as a credit against the ~~“tax”~~ (as
19 *“tax,”* as defined by Section-~~23036~~) 23036, for the taxable year
20 an amount equal to the sales or use tax paid or incurred by the
21 taxpayer in connection with the purchase of qualified property to
22 the extent that the qualified property does not exceed a value of
23 twenty million dollars (\$20,000,000).

24 (b) For purposes of this section:

25 (1) “LAMBRA” means a local agency military base recovery
26 area designated in accordance with Section 7114 of the Government
27 Code.

28 (2) “Taxpayer” means a corporation that conducts a trade or
29 business within a LAMBRA and, for the first two taxable years,
30 has a net increase in jobs (defined as 2,000 paid hours per employee
31 per year) of one or more employees in the LAMBRA.

32 (A) The net increase in the number of jobs shall be determined
33 by subtracting the total number of full-time employees (defined
34 as 2,000 paid hours per employee per year) the taxpayer employed
35 in this state in the taxable year prior to commencing business
36 operations in the LAMBRA from the total number of full-time
37 employees the taxpayer employed in this state during the second
38 taxable year after commencing business operations in the
39 LAMBRA. For taxpayers who commence doing business in this
40 state with their LAMBRA business operation, the number of

1 employees for the taxable year prior to commencing business
2 operations in the LAMBRA shall be zero. If the taxpayer has a net
3 increase in jobs in the state, the credit shall be allowed only if one
4 or more full-time employees is employed within the LAMBRA.

5 (B) The total number of employees employed in the LAMBRA
6 shall equal the sum of both of the following:

7 (i) The total number of hours worked in the LAMBRA for the
8 taxpayer by employees (not to exceed 2,000 hours per employee)
9 who are paid an hourly wage divided by 2,000.

10 (ii) The total number of months worked in the LAMBRA for
11 the taxpayer by employees that are salaried employees divided by
12 12.

13 (C) In the case of a taxpayer who first commences doing
14 business in the LAMBRA during the taxable year, for purposes of
15 clauses (i) and (ii), respectively, of subparagraph (B) the divisors
16 “2,000” and “12” shall be multiplied by a fraction, the numerator
17 of which is the number of months of the taxable year that the
18 taxpayer was doing business in the LAMBRA and the denominator
19 of which is 12.

20 (3) “Qualified property” means property that is each of the
21 following:

22 (A) Purchased by the taxpayer for exclusive use in a trade or
23 business conducted within a LAMBRA.

24 (B) Purchased before the date the LAMBRA designation expires,
25 is no longer binding, or becomes inoperative.

26 (C) Any of the following:

27 (i) High technology equipment, including, but not limited to,
28 computers and electronic processing equipment.

29 (ii) Aircraft maintenance equipment, including, but not limited
30 to, engine stands, hydraulic mules, power carts, test equipment,
31 handtools, aircraft start carts, and tugs.

32 (iii) Aircraft components, including, but not limited to, engines,
33 fuel control units, hydraulic pumps, avionics, starts, wheels, and
34 tires.

35 (iv) Section 1245 property, as defined in Section 1245(a)(3) of
36 the Internal Revenue Code.

37 (c) The credit provided under subdivision (a) shall only be
38 allowed for qualified property manufactured in California unless
39 qualified property of a comparable quality and price is not available
40 for timely purchase and delivery from a California manufacturer.

(d) (1) In the case where the credit otherwise allowed under this section exceeds the “tax” for the taxable year, that portion of the credit which exceeds the “tax” may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(2) *Notwithstanding paragraph (1), for taxable years beginning on or after January 1, 2011:*

(A) *In the case of any portion of a credit available for carryover and attributable to a taxable year beginning before January 1, 2006, that portion shall not be carried forward.*

(B) *In the case of credits first allowed in taxable years beginning on or after January 1, 2006, the carryover period shall be five years from the year for which the credit was first allowed.*

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of the credit otherwise allowed under this section and Section 23646, including any credit carryovers from prior years, that may reduce the “tax” for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer’s business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer’s California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer’s business income that is attributable to sources in this state shall first be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a LAMBRA by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

1 (A) The property factor is a fraction, the numerator of which is
2 the average value of the taxpayer's real and tangible personal
3 property owned or rented and used in the LAMBRA during the
4 taxable year, and the denominator of which is the average value
5 of all the taxpayer's real and tangible personal property owned or
6 rented and used in this state during the taxable year.

7 (B) The payroll factor is a fraction, the numerator of which is
8 the total amount paid by the taxpayer in the LAMBRA during the
9 taxable year for compensation, and the denominator of which is
10 the total compensation paid by the taxpayer in this state during the
11 taxable year.

12 (4) The portion of any credit remaining, if any, after application
13 of this subdivision, shall be carried over to succeeding taxable
14 years, as if it were an amount exceeding the "tax" for the taxable
15 year, as provided in subdivision (d).

16 (g) (1) If the qualified property is disposed of or no longer used
17 by the taxpayer in the LAMBRA, at any time before the close of
18 the second taxable year after the property is placed in service, the
19 amount of the credit previously claimed, with respect to that
20 property, shall be added to the taxpayer's tax liability in the taxable
21 year of that disposition or nonuse.

22 (2) At the close of the second taxable year, if the taxpayer has
23 not increased the number of its employees as determined by
24 paragraph (2) of subdivision (b), then the amount of the credit
25 previously claimed shall be added to the taxpayer's tax for the
26 taxpayer's second taxable year.

27 (h) If the taxpayer is allowed a credit for qualified property
28 pursuant to this section, only one credit shall be allowed to the
29 taxpayer under this part with respect to that qualified property.

30 (i) The amendments made to this section by the act adding this
31 subdivision shall apply to taxable years beginning on or after
32 January 1, 1998.

33 (j) *For taxable years beginning on or after January 1, 2011,*
34 *the credit allowed by this section must be claimed on a timely filed*
35 *original return of the taxpayer.*

36 *SEC. 20. Section 23646 of the Revenue and Taxation Code is*
37 *amended to read:*

38 23646. (a) (1) For each taxable year beginning on or after
39 January 1, 1995, there shall be allowed as a credit against the "~~tax~~"
40 (~~as "tax," as defined in Section 23036~~) 23036, to a qualified

1 taxpayer for hiring a qualified disadvantaged individual or a
2 qualified displaced employee during the taxable year for
3 employment in the LAMBRA. ~~The~~ *For qualified disadvantaged*
4 *individuals or qualified displaced employees who first commenced*
5 *employment in taxable years beginning on after January 1, 1995,*
6 *and before January 1, 2011, the credit shall be equal to the sum*
7 *of each of the following:*

8 ~~(1)~~

9 (A) Fifty percent of the qualified wages in the first year of
10 employment.

11 ~~(2)~~

12 (B) Forty percent of the qualified wages in the second year of
13 employment.

14 ~~(3)~~

15 (C) Thirty percent of the qualified wages in the third year of
16 employment.

17 ~~(4)~~

18 (D) Twenty percent of the qualified wages in the fourth year of
19 employment.

20 ~~(5)~~

21 (E) Ten percent of the qualified wages in the fifth year of
22 employment.

23 *(2) For qualified disadvantaged individuals or qualified*
24 *displaced employees who first commence employment in a taxable*
25 *year beginning on or after January 1, 2011, the credit shall be*
26 *equal to five thousand dollars (\$5,000) for each net increase in*
27 *qualified full-time employees, as specified in subdivision (c),*
28 *employed during the taxable year by the qualified taxpayer.*

29 (b) For purposes of this section:

30 ~~(1) “Qualified~~ *For taxable years beginning on or after January*
31 *1, 1995, and before January 1, 2011, “qualified wages” means:*

32 (A) That portion of wages paid or incurred by the employer
33 during the taxable year to qualified disadvantaged individuals or
34 qualified displaced employees that does not exceed 150 percent
35 of the minimum wage.

36 (B) The total amount of qualified wages which may be taken
37 into account for purposes of claiming the credit allowed under this
38 section shall not exceed two million dollars (\$2,000,000) per
39 taxable year.

(C) Wages received during the 60-month period beginning with the first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operation of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA designation were still in existence and binding.

(2) *“Acquired” includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.*

~~(2)~~

(3) “Minimum wage” means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

~~(3)~~

(4) “LAMBRA” means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

~~(4)~~

(5) “Qualified disadvantaged individual” means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer’s trade or business located in a LAMBRA.

(ii) ~~Who performs~~ *Performs* at least 50 percent of his or her services for the taxpayer during the taxable year in the LAMBRA.

(B) ~~Who is~~ *Is* hired by the employer after the designation of the area as a LAMBRA in which the individual’s services were primarily performed.

(C) ~~Who~~ *For an individual who first commenced employment in taxable years beginning on or after January 1, 1995, and before*

1 *January 1, 2011, he or she* is any of the following immediately
2 preceding the individual's commencement of employment with
3 the taxpayer:

4 (i) An individual who has been determined eligible for services
5 under the federal Job Training Partnership Act (29 U.S.C. Sec.
6 1501 et seq.), or its successor.

7 (ii) Any voluntary or mandatory registrant under the Greater
8 Avenues for Independence Act of 1985 provided for pursuant to
9 Article 3.2 (commencing with Section 11320) of Chapter 2 of Part
10 3 of Division 9 of the Welfare and Institutions Code.

11 (iii) An economically disadvantaged individual age 16 years or
12 older.

13 (iv) A dislocated worker who meets any of the following
14 conditions:

15 (I) Has been terminated or laid off or who has received a notice
16 of termination or layoff from employment, is eligible for or has
17 exhausted entitlement to unemployment insurance benefits, and
18 is unlikely to return to his or her previous industry or occupation.

19 (II) Has been terminated or has received a notice of termination
20 of employment as a result of any permanent closure or any
21 substantial layoff at a plant, facility, or enterprise, including an
22 individual who has not received written notification but whose
23 employer has made a public announcement of the closure or layoff.

24 (III) Is long-term unemployed and has limited opportunities for
25 employment or reemployment in the same or a similar occupation
26 in the area in which the individual resides, including an individual
27 55 years of age or older who may have substantial barriers to
28 employment by reason of age.

29 (IV) Was self-employed (including farmers and ranchers) and
30 is unemployed as a result of general economic conditions in the
31 community in which he or she resides or because of natural
32 disasters.

33 (V) Was a civilian employee of the Department of Defense
34 employed at a military installation being closed or realigned under
35 the Defense Base Closure and Realignment Act of 1990.

36 (VI) Was an active member of the Armed Forces or National
37 Guard as of September 30, 1990, and was either involuntarily
38 separated or separated pursuant to a special benefits program.

1 (VII) Experiences chronic seasonal unemployment and
2 underemployment in the agriculture industry, aggravated by
3 continual advancements in technology and mechanization.

4 (VIII) Has been terminated or laid off or has received a notice
5 of termination or layoff as a consequence of compliance with the
6 Clean Air Act.

7 (v) An individual who is enrolled in or has completed a state
8 rehabilitation plan or is a service-connected disabled veteran,
9 veteran of the Vietnam era, or veteran who is recently separated
10 from military service.

11 (vi) An ex-offender. An individual shall be treated as convicted
12 if he or she was placed on probation by a state court without a
13 finding of guilty.

14 (vii) A recipient of:

15 (I) Federal Supplemental Security Income benefits.

16 (II) Aid to Families with Dependent Children.

17 (III) Food stamps.

18 (IV) State and local general assistance.

19 (viii) Is a member of a federally recognized Indian tribe, band,
20 or other group of Native American descent.

21 *(D) For an qualified disadvantaged individual who first*
22 *commences employment in taxable years beginning on or after*
23 *January 1, 2011, and who meets the requirements of this*
24 *paragraph, that individual is a “qualified full-time employee” if,*
25 *in addition to any other requirement imposed by this section, he*
26 *or she was either:*

27 *(i) Paid wages by the qualified taxpayer for services of not less*
28 *than an average of 35 per hours per week.*

29 *(ii) A salaried employee and was paid compensation during the*
30 *taxable year for full-time employment, within the meaning of*
31 *Section 515 of the Labor Code, by the qualified employer.*

32 ~~(5)~~

33 (6) (A) “Qualified taxpayer” means a corporation that conducts
34 a trade or business within a LAMBRA and, for the first two taxable
35 years, has a net increase in jobs (defined as 2,000 paid hours per
36 employee per year) of one or more employees as determined below
37 in the LAMBRA.

38 ~~(A)~~

39 (B) The net increase in the number of jobs shall be determined
40 by subtracting the total number of full-time employees (defined

1 as 2,000 paid hours per employee per year) the taxpayer employed
2 in this state in the taxable year prior to commencing business
3 operations in the LAMBRA from the total number of full-time
4 employees the taxpayer employed in this state during the second
5 taxable year after commencing business operations in the
6 LAMBRA. For taxpayers who commence doing business in this
7 state with their LAMBRA business operation, the number of
8 employees for the taxable year prior to commencing business
9 operations in the LAMBRA shall be zero. If the taxpayer has a net
10 increase in jobs in the state, the credit shall be allowed only if one
11 or more full-time employees is employed within the LAMBRA.

12 ~~(B)~~

13 (C) The total number of employees employed in the LAMBRA
14 shall equal the sum of both of the following:

15 (i) The total number of hours worked in the LAMBRA for the
16 taxpayer by employees (not to exceed 2,000 hours per employee)
17 who are paid an hourly wage divided by 2,000.

18 (ii) The total number of months worked in the LAMBRA for
19 the taxpayer by employees who are salaried employees divided
20 by 12.

21 ~~(C)~~

22 (D) In the case of a qualified taxpayer that first commences
23 doing business in the LAMBRA during the taxable year, for
24 purposes of clauses (i) and (ii), respectively, of subparagraph ~~(B)~~
25 (C) the divisors “2,000” and “12” shall be multiplied by a fraction,
26 the numerator of which is the number of months of the taxable
27 year that the taxpayer was doing business in the LAMBRA and
28 the denominator of which is 12.

29 (E) (i) *Notwithstanding subparagraph (A), a “qualified*
30 *taxpayer” shall not include any person or entity described in*
31 *subparagraph (A) that first commences business activity in a*
32 *LAMBRA during the taxable year and has, within 24 months before*
33 *the taxpayer first commenced business activity in the LAMBRA,*
34 *had an overall reduction in the number of employees employed by*
35 *the taxpayer within the state outside of the LAMBRA, unless that*
36 *person or entity has made a written offer of employment to each*
37 *of the employees employed at the location within the state where*
38 *employment was reduced for such employees to continue their*
39 *employment with that person or entity within the LAMBRA.*

(ii) *In determining whether the taxpayer has first commenced doing business in the LAMBRA during the taxable year, the provisions of subdivision (g) of Section 24416.20, without application of paragraph (7) of that subdivision, shall apply.*

(iii) *The written offer referred to in this subparagraph shall be made prior to the termination of employment at the location within the state that is outside the LAMBRA.*

(iv) *If any employee described in clause (i) of this subparagraph does not timely receive a written offer, the person or entity shall not be a qualified taxpayer for that taxable year, even if other employees do receive a written offer.*

(v) *A person or entity may be required to provide, upon request of the Franchise Tax Board, written certification, under penalty of perjury, that the requirements of this subparagraph were met.*

(vi) *All employees of the trades or businesses that are treated as related under Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.*

~~(6)~~

(7) *“Qualified displaced employee” means an individual who satisfies all of the following requirements:*

(A) *Any civilian or military employee of a base or former base that has been displaced as a result of a federal base closure act.*

(B) (i) *At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer’s trade or business located in a LAMBRA.*

(ii) *Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in a LAMBRA.*

(C) *Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.*

(D) *For an individual who first commences employment in taxable years beginning on or after January 1, 2011, and who meets the requirements of this paragraph other than the requirements of subparagraph (A), that individual is a “qualified full-time employee” if, in addition to any other requirement imposed by this section, he or she was either:*

(i) *Paid wages by the qualified taxpayer for services of not less than an average of 35 per hours per week.*

(ii) *A salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.*

1 ~~(7)~~

2 (8) “Seasonal employment” means employment by a qualified
3 taxpayer that has regular and predictable substantial reductions in
4 trade or business operations.

5 ~~(8)~~

6 (9) “LAMBRA expiration date” means the date the LAMBRA
7 designation expires, is no longer binding, or becomes inoperative.

8 (10) “Annual full-time equivalent” means either of the
9 following:

10 (A) In the case of a full-time employee paid hourly wages,
11 “annual full-time equivalent” means the total number of hours
12 worked for the taxpayer by the employee (not to exceed 2,000
13 hours per employee) divided by 2,000.

14 (B) In the case of a salaried full-time employee, “annual
15 full-time equivalent” means the total number of weeks worked for
16 the taxpayer by the employee divided by 52.

17 (c) Except as provided in paragraph (2), the net increase in
18 qualified full-time employees of a qualified taxpayer shall be
19 determined by paragraph (1):

20 (1) (A) (i) If the state’s average nonfarm employment, as
21 determined by the Franchise Tax Board based upon information
22 published by the Employment Development Department as of
23 March 15 of each calendar year, has not decreased for the
24 calendar years beginning on the third and the second January 1
25 immediately preceding the beginning of the current taxable year,
26 as compared with the second and the first calendar years
27 respectively, then the net increase in qualified full-time employees
28 shall be determined on an annual full-time equivalent basis based
29 on the amount of the increase of qualified full-time equivalent
30 employees in excess of the greatest of the number of qualified
31 full-time equivalent employees employed by the qualified taxpayer
32 in any of the three immediately preceding taxable years, as
33 determined under subparagraph (B).

34 (ii) The amount determined under clause (i) shall include the
35 fractional amount, if any, of the increase for the taxable year.

36 (B) The net increase in qualified full-time employees for the
37 current taxable year shall be determined by subtracting the amount
38 determined under clause (ii) from the amount determined under
39 clause (i). If the amount determined under clause (ii) is equal to

1 or exceeds the amount determined under clause (i), the amount
2 determined under this subparagraph shall be zero.

3 (i) (I) The total number of qualified full-time employees
4 employed in the current taxable year by the qualified taxpayer and
5 by any trade or business acquired by the qualified taxpayer during
6 the current taxable year.

7 (II) The greatest total number of qualified full-time employees
8 employed in any of the three preceding taxable years by the
9 qualified taxpayer and by any trade or business acquired by the
10 qualified taxpayer during the current taxable year.

11 (ii) The increase in the total number of full-time employees
12 (determined under the full-time equivalent rules of paragraph (10)
13 of subdivision (b)) employed by the qualified taxpayer in this state
14 shall be determined by subtracting the amount determined under
15 subclause (II) from the amount determined under subclause (I). If
16 the amount determined under subclause (II) is equal to or exceeds
17 the amount determined under subclause (I), the amount determined
18 under this clause shall be zero.

19 (I) The total number of full-time employees employed in this
20 state in the current taxable year by the qualified taxpayer and by
21 any trade or business acquired by the qualified taxpayer during
22 the current taxable year.

23 (II) The greatest total number of full-time employees of the
24 qualified taxpayer employed in this state in any of the three
25 preceding taxable years by the qualified taxpayer and by any trade
26 or business acquired by the qualified taxpayer during the current
27 taxable year.

28 (2) (A) (i) If there is a decrease in the state's nonfarm
29 employment, as determined by the Franchise Tax Board based
30 upon information published by the Employment Development
31 Department as of March 15 of each calendar year, for the calendar
32 years beginning on the third and the second January 1 immediately
33 preceding the current taxable year, the net increase in qualified
34 full-time employees shall be determined on an annual full-time
35 equivalent basis as the lesser of the amount determined under
36 subparagraph (C) or the amount determined under subparagraph
37 (B).

38 (ii) The amount determined under clause (i) shall include the
39 fractional amount, if any, of the increase for the taxable year.

1 (B) The increase in the total number of qualified full-time
2 employees shall be determined by subtracting the amount
3 determined under clause (ii) from the amount determined under
4 clause (i). If the amount determined under clause (ii) is equal to
5 or exceeds the amount determined under clause (i), the amount
6 determined under this subparagraph shall be zero.

7 (i) The total number of qualified full-time employees employed
8 in the current taxable year by the qualified taxpayer and by any
9 trade or business acquired by the qualified taxpayer during the
10 current taxable year.

11 (ii) The total number of qualified full-time employees employed
12 in the preceding taxable year by the qualified taxpayer and by any
13 trade or business acquired by the qualified taxpayer during the
14 current taxable year.

15 (C) The increase in the total number of full-time employees
16 (determined under the full-time equivalent rules of paragraph (10)
17 of subdivision (b)) employed by the qualified taxpayer in this state
18 shall be determined by subtracting the amount determined under
19 clause (ii) from the amount determined under clause (i). If the
20 amount determined under clause (ii) is equal to or exceeds the
21 amount determined under clause (i), the amount determined under
22 this subparagraph shall be zero.

23 (i) The total number of full-time employees employed in this
24 state in the current taxable year by the qualified taxpayer and by
25 any trade or business acquired by the qualified taxpayer during
26 the current taxable year.

27 (ii) The total number of full-time employees of the qualified
28 taxpayer employed in this state in the preceding taxable year by
29 the qualified taxpayer and by any trade or business acquired by
30 the qualified taxpayer during the current taxable year.

31 (3) For qualified taxpayers who first commence doing business
32 in this state during the taxable year, the number of qualified
33 full-time employees under subparagraph (B) of paragraph (1) and
34 the number of full-time employees under subparagraph (C) of
35 paragraph (2) for the preceding taxable year shall be zero.

36 (4) For purposes of determining the number of full-time
37 employees of the qualified taxpayer who are employed in this state
38 under paragraphs (1) and (2), only those employees who receive
39 wages that are subject to Division 6 (commencing with Section
40 13000) of the Unemployment Insurance Code from the qualified

1 *taxpayer comprising more than 50 percent of that employee's total*
 2 *wages received from the qualified taxpayer for the taxable year,*
 3 *shall be included.*

4 *(5) For purposes of determining the increase in the number of*
 5 *qualified full-time employees of a qualified taxpayer under this*
 6 *section and Sections 23622.7, 23622.8, and 23634, the increase*
 7 *shall be determined separately for the targeted tax area, and each*
 8 *enterprise zone, manufacturing enhancement area, or local agency*
 9 *military base recovery area with respect to which a taxpayer is a*
 10 *qualified taxpayer.*

11 *(6) Any determination of the Franchise Tax Board under this*
 12 *subdivision with respect to whether there is an increase, a*
 13 *decrease, or no change in the state's nonfarm employment for any*
 14 *calendar year shall be final and may not be reviewed in any*
 15 *administrative or judicial proceeding, even if the data published*
 16 *by the Employment Development Department as of March 15 of*
 17 *any calendar year upon which the Franchise Tax Board relied in*
 18 *making its determination is substantially revised and would*
 19 *otherwise change which formula is applicable under this*
 20 *subdivision.*

21 *(e)*

22 *(d) For qualified disadvantaged individuals or qualified*
 23 *displaced employees hired on or after January 1, 2001, and before*
 24 *January 1, 2011, the taxpayer shall do both of the following:*

25 *(1) Obtain from the Employment Development Department, as*
 26 *permitted by federal law, the administrative entity of the local*
 27 *county or city for the federal Job Training Partnership Act, or its*
 28 *successor, the local county GAIN office or social services agency,*
 29 *or the local government administering the LAMBRA, a*
 30 *certification that provides that a qualified disadvantaged individual*
 31 *or qualified displaced employee meets the eligibility requirements*
 32 *specified in subparagraph (C) of paragraph (4) of subdivision (b)*
 33 *or subparagraph (A) of paragraph (6) of subdivision (b). The*
 34 *Employment Development Department may provide preliminary*
 35 *screening and referral to a certifying agency. The Department of*
 36 *Housing and Community Development shall develop regulations*
 37 *governing the issuance of certificates pursuant to Section 7114.2*
 38 *of the Government Code and shall develop forms for this purpose.*

39 *(2) For any qualified disadvantaged individual or qualified*
 40 *displaced employee who first commenced employment in a taxable*

1 year beginning on or after January 1, 2001, and before January
2 1, 2011, for which, as of the later of July 1, 2011, or the date the
3 qualified disadvantaged individual or qualified displaced employee
4 first commenced employment, a certification described in
5 paragraph (1) has not been obtained and a request for certification
6 described in paragraph (1) has not been previously submitted,
7 then a request for certification described in paragraph (1) with
8 respect to that employee shall be submitted to the certifying entity
9 no later than the date that is the later of 90 days after July 1, 2011,
10 or 30 days after the date the qualified disadvantaged individual
11 or qualified displaced employee first commenced employment. A
12 credit shall be allowed under this section with respect to a qualified
13 disadvantaged individual or qualified displaced employee
14 described in the preceding sentence only if a request for
15 certification was timely submitted in accordance with this
16 paragraph.

17 ~~(2)~~

18 (3) Retain a copy of the certification and provide it upon request
19 to the Franchise Tax Board.

20 ~~(d)~~

21 (e) (1) For purposes of this section, both of the following apply:
22 (A) All employees of all corporations that are members of the
23 same controlled group of corporations shall be treated as employed
24 by a single employer.

25 (B) The credit (if any) allowable by this section to each member
26 shall be determined by reference to its proportionate share of the
27 qualified wages giving rise to the credit.

28 (2) For purposes of this subdivision, “controlled group of
29 corporations” has the meaning given to that term by Section
30 1563(a) of the Internal Revenue Code, except that both of the
31 following apply:

32 (A) “More than 50 percent” shall be substituted for “at least 80
33 percent” each place it appears in Section 1563(a)(1) of the Internal
34 Revenue Code.

35 (B) The determination shall be made without regard to Section
36 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue
37 Code.

38 (3) If an employer acquires the major portion of a trade or
39 business of another employer (hereinafter in this paragraph referred
40 to as the “predecessor”) or the major portion of a separate unit of

1 a trade or business of a predecessor, then, for purposes of applying
2 this section (other than subdivision ~~(e)~~ (f)) for any calendar year
3 ending after that acquisition, the employment relationship between
4 an employee and an employer shall not be treated as terminated if
5 the employee continues to be employed in that trade or business.

6 ~~(e)~~

7 (f) (1) (A) ~~If~~—*For qualified disadvantaged individuals or*
8 *qualified displaced employees who first commenced employment*
9 *with the qualified taxpayer in taxable years beginning on or after*
10 *January 1, 1995, and before January 1, 2011, if the employment*
11 *of any employee, other than seasonal employment, with respect*
12 *to whom qualified wages are taken into account under subdivision*
13 *(a) is terminated by the taxpayer at any time during the first 270*
14 *days of that employment (whether or not consecutive) or before*
15 *the close of the 270th calendar day after the day in which that*
16 *employee completes 90 days of employment with the taxpayer,*
17 *the tax imposed by this part for the taxable year in which that*
18 *employment is terminated shall be increased by an amount equal*
19 *to the credit allowed under subdivision (a) for that taxable year*
20 *and all prior income years attributable to qualified wages paid or*
21 *incurred with respect to that employee.*

22 (B) If the seasonal employment of any qualified disadvantaged
23 individual, with respect to whom qualified wages are taken into
24 account under subdivision (a) is not continued by the qualified
25 taxpayer for a period of 270 days of employment during the
26 60-month period beginning with the day the qualified
27 disadvantaged individual commences seasonal employment with
28 the qualified taxpayer, the tax imposed by this part, for the taxable
29 year that includes the 60th month following the month in which
30 the qualified disadvantaged individual commences seasonal
31 employment with the qualified taxpayer, shall be increased by an
32 amount equal to the credit allowed under subdivision (a) for that
33 taxable year and all prior taxable years attributable to qualified
34 wages paid or incurred with respect to that qualified disadvantaged
35 individual.

36 (2) (A) Subparagraph (A) of paragraph (1) shall not apply to
37 any of the following:

38 (i) A termination of employment of an employee who voluntarily
39 leaves the employment of the taxpayer.

1 (ii) A termination of employment of an individual who, before
2 the close of the period referred to in paragraph (1), becomes
3 disabled to perform the services of that employment, unless that
4 disability is removed before the close of that period and the
5 taxpayer fails to offer reemployment to that individual.

6 (iii) A termination of employment of an individual, if it is
7 determined that the termination was due to the misconduct (as
8 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
9 the California Code of Regulations) of that individual.

10 (iv) A termination of employment of an individual due to a
11 substantial reduction in the trade or business operations of the
12 taxpayer.

13 (v) A termination of employment of an individual, if that
14 individual is replaced by other qualified employees so as to create
15 a net increase in both the number of employees and the hours of
16 employment.

17 (B) Subparagraph (B) of paragraph (1) shall not apply to any
18 of the following:

19 (i) A failure to continue the seasonal employment of a qualified
20 disadvantaged individual who voluntarily fails to return to the
21 seasonal employment of the qualified taxpayer.

22 (ii) A failure to continue the seasonal employment of a qualified
23 disadvantaged individual who, before the close of the period
24 referred to in subparagraph (B) of paragraph (1), becomes disabled
25 and unable to perform the services of that seasonal employment,
26 unless that disability is removed before the close of that period
27 and the qualified taxpayer fails to offer seasonal employment to
28 that qualified disadvantaged individual.

29 (iii) A failure to continue the seasonal employment of a qualified
30 disadvantaged individual, if it is determined that the failure to
31 continue the seasonal employment was due to the misconduct (as
32 defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of
33 the California Code of Regulations) of that individual.

34 (iv) A failure to continue seasonal employment of a qualified
35 disadvantaged individual due to a substantial reduction in the
36 regular seasonal trade or business operations of the qualified
37 taxpayer.

38 (v) A failure to continue the seasonal employment of a qualified
39 disadvantaged individual, if that individual is replaced by other
40 qualified disadvantaged individuals so as to create a net increase

1 in both the number of seasonal employees and the hours of seasonal
2 employment.

3 (C) For purposes of paragraph (1), the employment relationship
4 between the taxpayer and an employee shall not be treated as
5 terminated by either of the following:

6 (i) A transaction to which Section 381(a) of the Internal Revenue
7 Code applies, if the employee continues to be employed by the
8 acquiring corporation.

9 (ii) A mere change in the form of conducting the trade or
10 business of the taxpayer, if the employee continues to be employed
11 in that trade or business and the taxpayer retains a substantial
12 interest in that trade or business.

13 (3) Any increase in tax under paragraph (1) shall not be treated
14 as tax imposed by this part for purposes of determining the amount
15 of any credit allowable under this part.

16 (4) At the close of the second taxable year, if the taxpayer has
17 not increased the number of its employees as determined by
18 paragraph (5) of subdivision (b), then the amount of the credit
19 previously claimed shall be added to the taxpayer's tax for the
20 taxpayer's second taxable year.

21 ~~(f)~~

22 (g) In the case of an organization to which Section 593 of the
23 Internal Revenue Code applies, and a regulated investment
24 company or a real estate investment trust subject to taxation under
25 this part, rules similar to the rules provided in Section 46(e) and
26 Section 46(h) of the Internal Revenue Code shall apply.

27 ~~(g)~~

28 (h) The credit shall be reduced by the credit allowed under
29 Section 23621. The credit shall also be reduced by the federal
30 credit allowed under Section 51 of the Internal Revenue Code.

31 In addition, any deduction otherwise allowed under this part for
32 the wages or salaries paid or incurred by the taxpayer upon which
33 the credit is based shall be reduced by the amount of the credit,
34 prior to any reduction required by subdivision ~~(h)~~ (i) or ~~(i)~~ (j).

35 ~~(h)~~

36 (i) (1) In the case where the credit otherwise allowed under this
37 section exceeds the "tax" for the taxable year, that portion of the
38 credit that exceeds the "tax" may be carried over and added to the
39 credit, if any, in succeeding years, until the credit is exhausted.

1 The credit shall be applied first to the earliest taxable years
2 possible.

3 *(2) Notwithstanding paragraph (1), for taxable years beginning*
4 *on or after January 1, 2011:*

5 *(A) In the case of any portion of a credit available for carryover*
6 *and attributable to a taxable year beginning before January 1,*
7 *2006, that portion shall not be carried forward.*

8 *(B) In the case of credits first allowed in taxable years beginning*
9 *on or after January 1, 2006, the carryover period shall be five*
10 *years from the year for which the credit was first allowed.*

11 ~~(i)~~

12 *(j) (1) The amount of credit otherwise allowed under this section*
13 *and Section 23645, including any prior year carryovers, that may*
14 *reduce the “tax” for the taxable year shall not exceed the amount*
15 *of tax that would be imposed on the taxpayer’s business income*
16 *attributed to a LAMBRA determined as if that attributed income*
17 *represented all of the income of the taxpayer subject to tax under*
18 *this part.*

19 *(2) Attributable income shall be that portion of the taxpayer’s*
20 *California source business income that is apportioned to the*
21 *LAMBRA. For that purpose, the taxpayer’s business income that*
22 *is attributable to sources in this state first shall be determined in*
23 *accordance with Chapter 17 (commencing with Section 25101).*
24 *That business income shall be further apportioned to the LAMBRA*
25 *in accordance with Article 2 (commencing with Section 25120)*
26 *of Chapter 17, modified for purposes of this section in accordance*
27 *with paragraph (3).*

28 *(3) Income shall be apportioned to a LAMBRA by multiplying*
29 *the total California business income of the taxpayer by a fraction,*
30 *the numerator of which is the property factor plus the payroll factor,*
31 *and the denominator of which is two. For purposes of this*
32 *paragraph:*

33 *(A) The property factor is a fraction, the numerator of which is*
34 *the average value of the taxpayer’s real and tangible personal*
35 *property owned or rented and used in the LAMBRA during the*
36 *taxable year, and the denominator of which is the average value*
37 *of all the taxpayer’s real and tangible personal property owned or*
38 *rented and used in this state during the taxable year.*

39 *(B) The payroll factor is a fraction, the numerator of which is*
40 *the total amount paid by the taxpayer in the LAMBRA during the*

1 taxable year for compensation, and the denominator of which is
2 the total compensation paid by the taxpayer in this state during the
3 taxable year.

4 (4) The portion of any credit remaining, if any, after application
5 of this subdivision, shall be carried over to succeeding taxable
6 years, as if it were an amount exceeding the “tax” for the taxable
7 year, as provided in subdivision ~~(h)~~ (i).

8 ~~(j)~~

9 (k) If the taxpayer is allowed a credit pursuant to this section
10 for qualified wages paid or incurred, only one credit shall be
11 allowed to the taxpayer under this part with respect to any wage
12 consisting in whole or in part of those qualified wages.

13 (l) *For taxable years beginning on or after January 1, 2011,*
14 *the credit allowed by this section must be claimed on a timely filed*
15 *original return of the qualified taxpayer.*

16 SEC. 21. *Section 25128 of the Revenue and Taxation Code is*
17 *amended to read:*

18 25128. (a) (1) *Notwithstanding Section 38006, for taxable*
19 *years beginning before January 1, 2011, all business income shall*
20 *be apportioned to this state by multiplying the business income*
21 *by a fraction, the numerator of which is the property factor plus*
22 *the payroll factor plus twice the sales factor, and the denominator*
23 *of which is four, except as provided in subdivision (b) or (c).*

24 (2) *Notwithstanding Section 38006, for taxable years beginning*
25 *on or after January 1, 2011, all business income of an apportioning*
26 *trade or business, other than an apportioning trade or business*
27 *described in subdivision (b), shall be apportioned to this state by*
28 *multiplying the business income by the sales factor.*

29 (b) If an apportioning trade or business derives more than 50
30 percent of its “gross business receipts” from conducting one or
31 more qualified business activities, all business income of the
32 apportioning trade or business shall be apportioned to this state by
33 multiplying business income by a fraction, the numerator of which
34 is the property factor plus the payroll factor plus the sales factor,
35 and the denominator of which is three.

36 (c) For purposes of this section, a “qualified business activity”
37 means the following:

38 (1) An agricultural business activity.

39 (2) An extractive business activity.

40 (3) A savings and loan activity.

1 (4) A banking or financial business activity.

2 (d) For purposes of this section:

3 (1) “Gross business receipts” means gross receipts described in
4 subdivision (e) or (f) of Section 25120 (other than gross receipts
5 from sales or other transactions within an apportioning trade or
6 business between members of a group of corporations whose
7 income and apportionment factors are required to be included in
8 a combined report under Section 25101, limited, if applicable, by
9 Section 25110), whether or not the receipts are excluded from the
10 sales factor by operation of Section 25137.

11 (2) “Agricultural business activity” means activities relating to
12 any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
13 plantation, ranch, nursery, or range. “Agricultural business activity”
14 also includes activities relating to cultivating the soil or raising or
15 harvesting any agricultural or horticultural commodity, including,
16 but not limited to, the raising, shearing, feeding, caring for, training,
17 or management of animals on a farm as well as the handling,
18 drying, packing, grading, or storing on a farm any agricultural or
19 horticultural commodity in its unmanufactured state, but only if
20 the owner, tenant, or operator of the farm regularly produces more
21 than one-half of the commodity so treated.

22 (3) “Extractive business activity” means activities relating to
23 the production, refining, or processing of oil, natural gas, or mineral
24 ore.

25 (4) “Savings and loan activity” means any activities performed
26 by savings and loan associations or savings banks which have been
27 chartered by federal or state law.

28 (5) “Banking or financial business activity” means activities
29 attributable to dealings in money or moneyed capital in substantial
30 competition with the business of national banks.

31 (6) “Apportioning trade or business” means a distinct trade or
32 business whose business income is required to be apportioned
33 under Sections 25101 and 25120, limited, if applicable, by Section
34 25110, using the same denominator for each of the applicable
35 payroll, property, and sales factors.

36 (7) Paragraph (4) of subdivision (c) shall apply only if the
37 Franchise Tax Board adopts the Proposed Multistate Tax
38 Commission Formula for the Uniform Apportionment of Net
39 Income from Financial Institutions, or its substantial equivalent,

1 and shall become operative upon the same operative date as the
2 adopted formula.

3 (8) In any case where the income and apportionment factors of
4 two or more savings associations or corporations are required to
5 be included in a combined report under Section 25101, limited, if
6 applicable, by Section 25110, both of the following shall apply:

7 (A) The application of the more than 50 percent test of
8 subdivision (b) shall be made with respect to the “gross business
9 receipts” of the entire apportioning trade or business of the group.

10 (B) The entire business income of the group shall be apportioned
11 in accordance with either subdivision (a) or (b), ~~or subdivision (b)~~
12 ~~of Section 25128.5~~, as applicable.

13 *SEC. 22. Section 25128.5 of the Revenue and Taxation Code*
14 *is repealed.*

15 ~~25128.5. (a) Notwithstanding Section 38006, for taxable years~~
16 ~~beginning on or after January 1, 2011, any apportioning trade or~~
17 ~~business, other than an apportioning trade or business described~~
18 ~~in subdivision (b) of Section 25128, may make an irrevocable~~
19 ~~annual election on an original timely filed return, in the manner~~
20 ~~and form prescribed by the Franchise Tax Board to apportion its~~
21 ~~income in accordance with this section, and not in accordance with~~
22 ~~Section 25128.~~

23 ~~(b) Notwithstanding Section 38006, for taxable years beginning~~
24 ~~on or after January 1, 2011, all business income of an apportioning~~
25 ~~trade or business making an election described in subdivision (a)~~
26 ~~shall be apportioned to this state by multiplying the business~~
27 ~~income by the sales factor.~~

28 ~~(c) The Franchise Tax Board is authorized to issue regulations~~
29 ~~necessary or appropriate regarding the making of an election under~~
30 ~~this section, including regulations that are consistent with rules~~
31 ~~prescribed for making an election under Section 25113.~~

32 *SEC. 23. Section 25136 of the Revenue and Taxation Code is*
33 *amended to read:*

34 25136. (a) For taxable years beginning before January 1, 2011,
35 and for taxable years beginning on or after January 1, 2011, for
36 ~~which Section 25128.5 is operative and an election under~~
37 ~~subdivision (a) of Section 25128.5 has not been made~~, sales, other
38 than sales of tangible personal property, are in this state if:

39 (1) The income-producing activity is performed in this state; or

1 (2) The income-producing activity is performed both in and
2 outside this state and a greater proportion of the income-producing
3 activity is performed in this state than in any other state, based on
4 costs of performance.

5 ~~(3) This subdivision shall apply, and subdivision (b) shall not~~
6 ~~apply, for any taxable year beginning on or after January 1, 2011,~~
7 ~~for which Section 25128.5 is not operative for any taxpayer subject~~
8 ~~to the tax imposed under this part.~~

9 ~~(b) For taxable years beginning on or after January 1, 2011:~~

10 ~~(1) Sales from services are in this state to the extent the~~
11 ~~purchaser of the service received the benefit of the service in this~~
12 ~~state.~~

13 ~~(2) Sales from intangible property are in this state to the extent~~
14 ~~the property is used in this state. In the case of marketable~~
15 ~~securities, sales are in this state if the customer is in this state.~~

16 ~~(3) Sales from the sale, lease, rental, or licensing of real property~~
17 ~~are in this state if the real property is located in this state.~~

18 ~~(4) Sales from the rental, lease, or licensing of tangible personal~~
19 ~~property are in this state if the property is located in this state.~~

20 ~~(5) (A) If Section 25128.5 is operative, then this subdivision~~
21 ~~shall apply in lieu of subdivision (a) for any taxable year for which~~
22 ~~an election has been made under subdivision (a) of Section~~
23 ~~25128.5.~~

24 ~~(B) If Section 25128.5 is not operative, then this subdivision~~
25 ~~shall not apply and subdivision (a) shall apply for any taxpayer~~
26 ~~subject to the tax imposed under this part.~~

27 ~~(C) Notwithstanding subparagraphs (A) or (B), this subdivision~~
28 ~~shall apply for purposes of paragraph (2) of subdivision (b) of~~
29 ~~Section 23101.~~

30 ~~(e) The Franchise Tax Board may prescribe those regulations~~
31 ~~as necessary or appropriate to carry out the purposes of subdivision~~
32 ~~(b).~~

33 ~~(b) This section shall not apply to taxable years beginning on~~
34 ~~or after January 1, 2011, and as of December 31, 2011, is repealed.~~

35 *SEC. 24. Section 25136 is added to the Revenue and Taxation*
36 *Code, to read:*

37 *25136. (a) Notwithstanding Section 38006, for taxable years*
38 *beginning on or after January 1, 2011, sales, other than sales of*
39 *tangible personal property, are in this state if:*

1 (1) Sales from services are in this state to the extent the
2 purchaser of the service received the benefit of the services in this
3 state.

4 (2) Sales from intangible property are in this state to the extent
5 the property is used in this state. In the case of marketable
6 securities, sales are in this state if the customer is in this state.

7 (3) Sales from the sale, lease, rental, or licensing of real
8 property are in this state if the real property is located in this state.

9 (4) Sales from the rental, lease, or licensing of tangible personal
10 property are in this state if the property is located in this state.

11 (b) The Franchise Tax Board may prescribe regulations as
12 necessary or appropriate to carry out the purposes of this section.

13 SEC. 25. No reimbursement is required by this act pursuant
14 to Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

22 SEC. 26. This act provides for a tax levy within the meaning
23 of Article IV of the Constitution and shall go into immediate effect.
24

25
26 **All matter omitted in this version of the bill**
27 **appears in the bill as amended in the**
28 **Senate, March 24, 2011. (JR11)**
29
30

31
32 CORRECTIONS: _____

33 Heading—Amended Line—Line 1.
34 _____